

AN
E S S A Y
ON
USES AND TRUSTS,
AND ON THE
NATURE AND OPERATION
OF
CONVEYANCES AT COMMON LAW,
AND THOSE DERIVING THEIR EFFECT
FROM THE STATUTE OF USES.

SECOND EDITION.

By FRANCIS WILLIAMS SANDERS, Esq;
OF LINCOLN'S INN.

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AND THOSE DERIVING THEIR EFFECT FROM THE
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SECOND VOLUME

Venezuela

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FEOFFMENT.

(1.) I MAY describe a feoffment to be Definition of a feoffment.
a conveyance of *corporeal* hereditaments from one to another by delivery of the possession upon, or within view of, the hereditaments so conveyed.

The ceremony used in such act of delivery is called *livery of seisin*.

(2.) As feoffments are the most simple, The antiquity of feoffments.
so they are the most ancient species of conveyance. The original method of acquiring property in lands was by occupancy; and the first mode of transferring it from one man to another was by the public and solemn delivery of the possession. Lord

The antiquity of
feoffments.

Coke ^a produces a conveyance of this kind at a very early period. The conveyance, which he alludes to, was that made by Ephron to Abraham, when he gave him the field of *Machpelah* ^b. So when the kinsman of Elimelech gave unto Boas the parcel of land, which was Elimelech's, he took off his shoe, and gave it unto Boas in name of *seisin* of the land (after the manner of Israel) in the presence and with the testimony of many witnesses ^c.

This mode of conveyance, by actual delivery of the land, derives its present name of *feoffment* from the introduction of the feudal system in England; for it is the *donatio feudi* according to its acceptation with us ^d. At what period, however, whether before or after the Norman conquest, we are to date the establishment of the feudal tenures in this country, has been a point so much disputed, that it is impossible to form a decided opinion

^a Co. Litt. 49. b.

xxv. 9, 10.

^b Gen. xxiii. 11.

^d Co. Litt. 9. a.

^c Ruth. iv. 7. 8. Deut.

upon

upon it without differing from some of the most respectable authorities^e.

The antiquity of feoffments.

(3.) The conveyance by feoffment was introduced, when men were scarcely acquainted with the use of letters; it was necessary, therefore, that it should be on or near to the land, in order that the tenants of the manor, who in those days determined in the lord's court all controversies relating to such translation, might be witnesses to the livery. After the conquest, charters of feoffment began to be in use; at first,

Introduction of the charter of feoffment.

^e It is worthy of the reader's notice, that the term *feodum*, or *feof*, was not always applied to lands. Thus, in a convention made between Henry the first, and Robert Earl of Flanders, dated at Dover the 16th of the calends of June 1101, wherein the earl engages to assist Henry, *ad tenendum et defendendum regnum Angliæ, contra omnes homines, qui vivere, et mori possint*, the king of England on his part, engages to pay the Earl

unoqueque anno 400 marcas argenti in feodo. Vide Acta Regia, 8. in notis. However, when we speak of a *feoffment*, we must understand the word as applying to a conveyance of *lands* only. For Britton on this head tells us, that "*Don est un roisme general, plus que n'est feoffment; car Don est generale a toutes choses moebles, et nient moebles, et feoffment est riens fars-que de soil.*" Wing. Brit. ca. 34."

Introduction of
the charter of
feoffments.

however, they were drawn up in no regular form; nor was there any uniformity in the style till the reign of Edward I. Still the charter of feoffment was by no means a necessary part of the conveyance^f; though we may conclude, that men found by experience, that it was the most sure way to authenticate and secure the titles to their property. At all times, a livery of seisin, made in pursuance of a charter, was less liable to disputes concerning its validity, than that made on a conveyance without a deed. The conveyance of feoffment in writing served, as Bracton observes^g, *ad perpetuam memoriam, propter brevem hominum vitam, et ut facilius probari possit donatio*. The legislature has, however, rendered a charter of feoffment as necessary as the livery of seisin. For by the statute of frauds^h, there can be no conveyance of lands, or hereditaments, for more than three years, without writing.

Of the two kinds
of livery of sei-
son.

(4.) To every feoffment, whether made to create an estate in fee simple, fee tail, or

^f 2 Bac. ab. 483.

^h 29 Car. 2. c. 3.

^g Bract. lib. 2. fol. 33. b.

for

for life, livery of seisin is indispensably necessary¹: and it properly denotes the willingness of the feoffor to part with, and the feoffee to receive, the estate, of which the feoffment is made^k. This livery of seisin is divided into livery *in deed*, and livery *within view*, or *in law*.

Of the two kinds of livery of seisin.

(4.) 1. Livery *in deed* is performed by the feoffor's coming upon the land, and delivering to the feoffee, a clod, branch, or turf, there growing, "In name of seisin of all the lands and tenements contained in this deed^l:" or livery in deed may be given by the feoffor's delivering the *charter* upon the land, in the name of livery of seisin of all the lands comprized in the deed^m; or by words only, without any act of delivery, as if the feoffor, being upon the land, says to the feoffee, "Enter you into this land, and take seisin of it in the name of all the land contained in this deedⁿ." But in all cases, where the delivery of the charter is to serve as

Livery in deed.

¹ Shep. T. 206.

^m 9 Co. 138. a. 2 Roll.

^k West's Symb. part 1. f. 251.

ab. 7. pl. 10.

ⁿ 6 Co. 26. b. 9 Co.

^l 2 Black. Com. 315.

137. b. Sed contra, Cro. Jac, 80, p^l. 2.

Livery in deed.

livery of seisin, it is necessary, that the charter should be delivered in the *name of seisin*, &c. &c.; for otherwise it will serve as a delivery to perfect the *deed*, and not as *livery of seisin*^o. If the livery of seisin be of a house, the feoffor must take the ring, or latch of the door (the house being quite empty), and deliver it in the form above mentioned; and then the feoffee must enter alone, shut the door, then open it, and let in the others^p.

Livery by attorney.

In all cases of livery of seisin by deed, a man may either *give*, or *receive* it by attorney^q. The power to *give* or *receive* the livery must be by *deed*, in order that it may appear, whether it be pursuant to the authority^r. If the feoffment be by *deed poll*, the letter of attorney may be contained in it; but not so, if it be by deed *indented*; unless the attorney be a party to such indenture^s. The power of attorney must be executed both in the life time of the feoffor,

^o Co. Lit. 48. a.

^p 2 Black. 315.

^q Co. Litt. 52. a. 2
Roll. ab. 8.

^r 2 Roll. ab. 8. pl. 4, 5

^s Co. Litt. 52. b. Sed

contra. Cro. Eliz. 905.

^z Roll. ab. 8. pl. 12.
Shep. T. 217.

and the feoffee^f. It is said, that when the king made a feoffment, he used to issue his writ to empower his sheriff, or other person, to deliver seisin: in time other great men did the same; and this circumstance gave rise to powers of attorney^g.

Livery by attorney.

(4.) 2. The livery *within view*, or *in law*, is made, when the feoffor is not actually upon the land, or in the house, but being in sight of it, says to the feoffee, "I give you yonder house, enter and take possession;" or by delivering a charter of feoffment within view, says, "I will, that you have the lands that you see there, which are comprized in this deed, according to the purport of it^h." There is this inconvenience attending the above mode of delivery, that no freehold can be vested before an actual entry made by the feoffeeⁱ. Therefore, in case of the death either of the feoffor or feoffee before entry the livery is void. It

Livery within view.

^f Co. Litt. 52. b.

B. 3 Ba. ab. Feof. E.

^g Butl. note 2 Co.

^h Pollexf. 47. 2 Bac.

Litt. 271. b. See fur-

ab. 485.

ther as to livery by at-

ⁱ 2 Roll. ab. 7. pl. 2.

torney, Co. Litt. 52. b.

^k Co. Litt. 266. b.

note 2. Com. Dig. Feof.

Shep. Touch. 217.

Livery within
view.

may possibly happen, that the feoffee is prevented from making an actual entry by bodily fear; yet still he may make his *claim*, as near to the land, as he dares to venture; which will be sufficient to vest the possession in him, and render the livery complete¹. It must be observed, that no livery within view can be made by attorney².

Livery of lands
lying in different
places and in
different coun-
ties.

(5.) If a feoffment be made of lands in several towns in one county, and seisin be given of parcel of the lands in one town, in the name of the lands in that and in the other towns, all these lands of the feoffor will pass³. But if a feoffment be made of lands in different counties, livery in deed must be made in each of the counties⁴: yet livery within view may be made of lands lying in different counties⁵. So too if livery in deed be made in the name of the whole of a manor, which extends to two

¹ 2 Roll. ab. 3. (I).
Co. Litt. 48. b.

² Co. Litt. 52. b.
Shep. T. 217. and so, it
should seem, as to *receiv-*
ing livery. See Co. Litt.
49. b.

³ Litt. f. 418. 2 Roll.
ab. 11.

⁴ 2 Roll. ab. 11. pl.
2. Perk. f. 227.

⁵ Co. Litt. 48. b. 2
Bac. ab. 486.

counties,

counties, livery in one county is sufficient ^d.

Livery of lands lying in different places and in different counties.

(6.) The ceremony of livery was first instituted, that the *pares* of the county might, upon any dispute concerning the freehold, be able to judge, in whom the right was^e. Hence no estate of freehold can be made to commence *in futuro* by feoffment and livery immediately given thereon^f. But on the creation of a freehold remainder, where there is a preceding estate for years, as a lease for three years to A. remainder in fee to B., if livery of seisin, which must be in *deed*, be made to the lessee for years, the freehold is immediately created, and vested in B. during A.'s term^g. For this is an estate, though to be enjoyed *in futuro*, yet commencing *in presenti*. But there would be no notoriety or evidence, if after livery made the freehold still remained in the feoffor^h; as where a feoffment is made to B. in fee, his estate to commence seven years from that time, or

The livery cannot create an estate of freehold to commence *in futuro*.

^d Perk. f. 227.

^g Litt. f. 60. 2 Black.

^e 2 Bac. ab. 486.

166. Co. Litt. 49. b.

^f Co. Litt. 27. a. 5

^h 2 Roll. ab. 7. pl. 8.

Co. 94. b. 2 Vent. 204.

Cro. El. 344.

after

The livery can-
not create an
estate of freehold
to commence in
futuro,

after the feoffor's death. In such case the investiture would rather create, than prevent, uncertainty.

If livery be made to a lessee for years, remainder to the right heirs of B., this livery is void; because *nemo est heres viventis*¹, and because it is a rule, that no contingent remainder can be supported without a preceding estate of freehold. But if A. lease to B. for years, on condition, that if B. pay him a certain sum on such a day, then B. shall have the fee-simple; upon livery of seisin to B. the freehold passes to him conditionally^k. But if B. had an estate for *life*, with a like condition, the livery would not have carried the inheritance, till the performance of the condition^l.

Of livery of
lands in the pos-
session of a
lessee, &c.

(7.) As the design of livery was to denote the change of possession, it must follow, that the possession, which is delivered, should be vacant. Therefore, it is generally true, that every feoffor should have *actual* possession^m: and where a man has let his lands

¹ Co. Litt. 217. a.

^k Litt. f. 350.

^l Co. Litt. 217. b.

^m Co. Litt. 48. b. 2.

Roll. ab. 3. 4. Dy. 33.

a. b. Cro. El. 322.

out on lease, or has them extended on a statute merchant, &c. he cannot, whilst the lessee or conuzee is in possession, make a valid feoffment, and livery of them^a. But this must be understood, where the lessee or tenant is averse to such feoffment and livery; for where he consents, it is clearly good^o; and if there be several tenants, there must be as many liveries^p. But in speaking of tenants of the lands, tenants at will and at sufferance are not included; for their consent is by no means necessary^q. Though the feoffor's lands are out upon lease, yet if he can obtain a clear and actual possession (though the lessee dissent), the livery is valid; and it is immaterial, whether such possession be gained by the lessee's own absence^r, or by the ouster of him by the feoffor^s. Yet in cases of ouster, and absence of the lessee, the possession of any part of the lands by his wife, children, or

Of livery of lands in the possession of a lessee, &c.

^a See the above cases, and 2 Co. 31. b.

^o Co. Litt. 48. b. Dy. 33. a. b. Concerning an implied consent, see 2 Roll. ab. 5.

^p Dy. 18. a. b, pl.

106. 2 Black. Com. 316.

^q 2 Roll. ab. 4. Dy. 18. b.

^r Dy. 363. a. 2 Roll. 4. pl. 11.

^s Moor, 91. pl. 226.

servants,

Of livery of
lands in the
possession of a
lessee, &c.

servants, has been deemed sufficient to avoid the livery ¹. And as the servant is supposed to act for the benefit of his master, even his permission will not make good the livery ², though, indeed, the subsequent consent of the master will ³. But the cattle of the lessee continuing upon the land will not affect the operation of the livery ⁴.

How the livery
can correct the
limitations in
the deed of fe-
offment.

(8.) A charter of feoffment was found particularly useful in pointing out the certainty of the limitation of the estate intended to be conveyed by the feoffment and livery: for parol limitations, at the time the livery was made, must ever have been liable to objections and disputes. Yet it was said, that the livery would alter and correct the limitation made in the charter of feoffment. Thus, if the charter had been made in *fee*, and the feoffor had delivered seisin for *life*, the feoffee could have held but for life ⁵. But at the same time, as the livery was indorsed, it prevented any uncertainty. How-

¹ Co. Litt. 48. b. ²
Roll. ab. 4. 5. Bro. feof.
66.

⁴ 2 Roll. ab. 3.

³ Ibid.

⁵ Co. Litt. 48. b.

⁶ Co. Litt. 222. b.

ever, if in that case the livery had been made for life, *secundum formam chartæ*, the feoffee would nevertheless have had the *fee*; because the livery then had a reference to the deed, which limited the estate in fee ^a.

How the livery can correct the limitations in the deed of feoffment.

These remarks, it is hoped, will afford a sufficient knowledge of the general rules relating to livery of seisin. According to the present disuse of the conveyance by feoffment, there are very few other cases to be found on the subject of any real consequence. They, however, who wish to search more minutely into this learning, are referred to the authors cited below ^b.

(9.) Though the conveyance by feoffment is now very seldom resorted to; it is by no means an obsolete conveyance. In some cases it operates as strongly as the conveyances by fine and recovery: in others more forcibly: and the operation of it in those particular instances will be the subject of our enquiries.

The operation of the feoffment in particular cases.

^a Co. Litt. 48. a. 222. b. 331. a.

^b Vin. ab. feoff. 2 Ba. ab. feoff. 2 Roll. ab.

feoff. Com. Dig. feoff. West. Symb. pl. 1. f. 235 to 264. Shep. T. 199 to 217.

(9.) 1. It

As to the destruction of contingent remainders.

(9.) 1. It has the effect of barring or destroying contingent remainders depending upon particular estates. This quality is annexed to a fine and recovery, but not to a bargain and sale, lease and release, or grant^c. In Archer's case^d, where lands were devised to A. for life, and to the next heir male of A. and the heirs male of the body of such next heir male (which limitation was deemed a contingent remainder to the son of A.), it was determined, that the feoffment of A. destroyed the contingent remainder to his next heir male. So if there be tenant for life, remainder to the right heirs of J. S. and the tenant for life make a feoffment during the life of J. S.; the particular estate is determined, and the contingent remainder to the heirs of J. S. destroyed^e.

Shifting and future uses.

(9.) 2. It was observed in a preceding page, that a springing or shifting use cannot be barred by feoffment, fine, or recovery; unless the seisin, out of which it is to be served, be disturbed; as in the case of a covenant to stand seised to the use of such a

^c 3 Will. 245. See post, bargain and sale, &c.

^d 1 Co. 66. b.

^e Litt. Rep. 160.

person

person upon a particular event: in which, until the contingency happens, the use in fee results to the covenantor; and the covenantor, before the use vests, may by a feoffment prevent its taking effect^f. But though a man cannot bar a shifting or future use to a third person, except in the instance just mentioned, yet he may exclude himself by a feoffment from all future uses, and possibilities. Thus in a case^g where J. S. covenanted to convey lands to the use of himself in fee, until such time as he the said J. S. his heirs, executors, or administrators, should make default in payment of a certain sum, and after such default to the use of the queen, her heirs and successors, until her heirs and successors should receive a certain sum; after which period to the use of J. S. and his heirs for ever; J. S. levied a fine to those uses; and afterwards, being seised accordingly, he *bargained* and *sold* the lands to a stranger. Default was then made in payment of the money; the queen seized the lands, and granted them over to another and his heirs, *quousque* the

^f See *supra*, 145 to 148.

See also 1 Co. 174. b. 111. b. 112. a. b. Hob.

^g 1 Leon. 33. pl. 40.

337.

money

Shifting and
future uses.

money be paid. Afterwards J. S. paid the money; and the question was, whether he could have the lands again contrary to his own express bargain and sale. It was resolved, that as J. S. at the time of the bargain and sale had an estate in fee, *determinable* upon a default of payment, according to the first limitation of the use; so that determinable fee only passed by the bargain and sale, and not the *new* estate, which accrued by the latter limitation after the money paid, for *that* was not *in esse* at the time of the bargain and sale: but that if J. S. had conveyed by *feoffment* or *fine*, then he would have barred himself from ever taking under the latter limitation of the use.

Powers in
gross, &c. rents,
common, &c.

(9.) 3. A feoffment destroys powers *appendant* and powers in *gross*; but not powers *collateral*^b: and it bars the feoffor of all interest in the lands, such as rents, common, and the like¹; and also of the benefit of a condition of re-entry, writs of error, and attain, &c.^k.

^b See *supra*, 1 vol. 161 to 164.

^k *Ibid*, 200. 1 Co. 112. a. b.

¹ *Shep. T.* 199.

So

So if a man seised of an estate of inheritance in his own right, and possessed of a lease for years *in futuro* in right of his wife, make a feoffment of the land; by the feoffment the term is extinguished¹. But in this case, if the grantor had conveyed by bargain and sale, the lease *in jure uxoris* would not have been affected by it^m. So it should seem, that if A. be entitled to a rent-charge issuing out of the manor of D. in right of his wife, and afterwards purchase the manor; by a bargain and sale thereof the rent will not passⁿ.

Of powers in gross, &c. rents, common, &c.

(9.) 4. A feoffment is the only conveyance, by which a tenant for years, by elegit, statute merchant, or staple, or a copyholder, can create an estate of freehold by disseisin^o. The utility of the feoffment, in this instance, exceeds all other conveyances. As to a recovery, there is an absolute necessity, that there should be a tenant of the freehold, against whom the writ of entry may be brought: and as to a fine, if a tenant for

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

¹ See Bracebridge's case, Plowd. 422, 423. Moor, 171. pl. 304. ¹ Leon. 5.

^m Moor, 171.

ⁿ ¹ Leon. 6.

^o See Co. Litt. 49. a.

² Inst. 413.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

years, &c. levy a fine without having previously created a freehold by disseisin, the fine may be avoided by pleading *partes finis nihil habuerunt* ^p.

To make a feoffment valid, nothing is wanting in the feoffor but *possession*; and when he has it, though it be but a naked one, the livery will create an estate of freehold by disseisin ^q: and the estate of freehold thus created will be sufficient, as I have before said, to support a fine levied upon it.

Thus in a case, cited by Mr. Knowler^r, where cestuique use, *before* the statute of uses, conveyed the use by *bargain and sale*, and afterwards levied a *fine* to a *stranger*: the question was, whether the fine was not void. Neither of the parties had any thing in *use*, or *possession*; for by the bargain and sale the use was in the *bargainee*; and consequently, there was nothing remaining in the *bargainor*, nor conveyed to the

^p See 1 P. W. 519.
1 Vent. 241. 2 Atk.
241. 3 Atk. 562. Hard:
401.

^q 1 Burr. 92. Bro.
Dis. 64. Bract. lib. 2.
fol. 31. a. 11. b.
^r 1 Burr. 95.

stranger.

Stranger. It was argued, that if the fine were not good, great inconvenience would follow; for that many recoveries had been suffered against the bargainor, after he had conveyed the use. To this Fitzherbert replied, that it was the folly of purchasers, that they did not take a *feoffment* from cestuique use, before the fine was levied: for if they did, the *fine* would be *good*. For his part, he said, he would never purchase any land without taking a *feoffment*; so that he might be in *possession*, when the fine should be levied; for then the fine would be *undoubtedly* good. In this case, the feoffment by the bargainor, after the bargain and sale, could not have been warranted by the statute 1 Rich. 3. c. 1., supposing he had made it to the stranger; because, after that period, in fact *he* was not *cestuique use*.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

In the case of *Focus v. Salisbury**, Lord Hale observes, "when lessee for years or at will is to levy a fine, it is *usual* for the lessee to make a feoffment first, to *displace the other estates*." So Lord Coke, in speaking of a tenant by copy of court roll,

* Hard. 400.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created,

observes, that if he make a feoffment in fee, and levy a *fine*, with proclamations, and five years pass, the lord is barred ^r.

But if a tenant at will, copyholder, or lessee for years, make a feoffment, and levy a fine, and still continue in *possession*; his payment of rent, or performance of services, will be deemed a fraudulent circumstance, and will prevent the operation of the feoffment and fine in barring the owners of the inheritance. Thus, in Fermor's case^r, where R. F. seised of the manor of S. leased some lands, parcel of the said manor, to J. S. for *years*; who also was possessed of other lands at the *will* of R. F. and held lands of the said manor by *copy* of court roll; J. S. made a feoffment with livery to C. for life, and then levied a fine with proclamations. J. S. continued all the time in possession, and paid the rents to R. F. And it was resolved, that as the feoffment was made, and as the fine was levied by fraud and covin, the owner of the fee should not be bound by the five years non-claim.

^r Co. Law Tracts,
126.

^r 3 Co. 77. a.

Though

Though a feoffment by tenant for years, &c. will create a freehold by disseisin, which estate of freehold will support a fine, yet a feoffment by tenant in tail *in remainder* will not create *such* an estate of freehold, as can support a *common recovery*. This point was settled in the case of *Atkyns v. Horde* *; in which a distinction was made between an actual disseisin and a disseisin at the *election* of the parties. But it does not appear to me, that the distinction there taken was applicable to the case of a disseisin created by feoffment: the case indeed seems rather to have been determined upon general principles of justice, than from strictly legal conclusions. Lord Mansfield, in delivering the opinion of the court, observed, that if the question had been, whether tenant in tail *in remainder* should by an injurious entry and feoffment acquire a benefit to himself to the prejudice of the reversioner; it would have been adjudged, from *eternal principles of justice*, that an act founded on wrong should *not*, by virtue of the *crime itself*, become legal for the author's advantage. "And now," added his lordship, "it is agitated, when

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

* 1 Burr. 60. Cowp. 689.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

“ common recoveries are established as a
 “ *species of alienation*: and the question is,
 “ whether the rule of law, which requires
 “ the concurrence of the owner of the first
 “ estate for life, shall be overturned?
 “ 'Tis better to subvert the rule *directly*, than
 “ suffer it to be done by a secret *injurious*
 “ *entry* and feoffment.”

The notion of a disseisin *at election* arose from the circumstance of a man's *supposing* himself to be disseised, when in *fact* he was *not*, for the sake of entitling himself to the easy and commodious remedy by assize of *novel disseisin* (which was the common method of trying titles, till the ejectment came in use^v), instead of being driven to the more tedious process of a writ of entry. The remedy by assize of *novel disseisin* was introduced to redress *actual* disseisins recently committed; and the facility of that remedy induced others, who were wrongfully kept out of the freehold (though not by an actual disseisor), to allow or feign themselves to be disseised, merely on account of the remedy^w.

^v 4 Barr. 110.

^w See 3 Black. Com. 170, 171.

Mr.

Mr. Butler^x, in a note upon this subject, observes, that " By a disseisin at
" the election of the party is not to be
" understood an act, which in itself is a
" disseisin, but which the party, sup-
" posed to be disseised, may, if he pleases,
" consider as *not* amounting to a disseisin;
" on the contrary, every act which is sus-
" ceptible of being made a disseisin by elec-
" tion, is *no* disseisin, *till* the party in ques-
" tion, by his election, makes it such." The case of *Blundel v. Baugh*^y is an instance of a disseisin at election. In that case the judges held, that if a tenant at will make a lease for years, rendering rent, and enter, and pay rent, that can be no disseisin, unless at the election of the first lessor. In this case the original act by the tenant at will, viz. the making the lease for years, was not of itself sufficient to create a disseisin; but if the first lessor had feigned himself to be disseised for the sake of the remedy, then it would have become a disseisin upon the election of the first lessor.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

^x Butl. Co. Litt. 330.
b. n. 1.

See the cases cited, 1
Burr. 111. 112. 113.

^y W. Jones 315. 316.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created,

It follows, from the above explanation of a disseisin at the election of the party, that every act, which *immediately* of itself creates a disseisin, must be considered as an *actual* disseisin. Now the feoffment of a tenant for years, at will, &c. had the peculiar force of creating an *immediate* estate of freehold in the feoffee, with all the rights and incidents annexed to it; the estate of the feoffee became *immediately* subject to dower and curtesy, and the descent upon the heir *immediately* took away the entry of the disseisee^z.

It was said indeed in the above case of *Atkyns v. Horde*, that where the books speak of an actual disseisin created by the feoffment of a tenant for years, &c. it must be understood of feoffments of *old*, attended with livery; and an *actual* transmutation of the possession; but that conveyances had now languished into *mere form*, and had lost their *efficacy* and *solemnity*.

But Mr. Butler, in the excellent note so frequently referred to, has endeavoured to

^z See Butl. Co. Litt. 330. b. note 1.

prove

prove (and I think successfully), that feoffments from the time of Henry the second (which is prior in point of time to the instances given by the judges as cases of *old* feoffments) to the present period, have not been made with any other solemnities, than those with which they are made at present; and of course that the operation and *efficacy* universally allowed them by courts of judicature, and writers of authority, from that monarch's reign, must be ascribed to them *now*. Mr. Butler concludes by observing, that from the authority of Bracton and others, the disseisin produced by *feoffments* must be understood to be an *actual* disseisin, and not a disseisin merely at the *election* of the party; that, however slender, bare, or tortious, the possession of the feoffor is, his feoffment necessarily and unavoidably vests the freehold in the feoffee, till the disseisor, by entry or action, restores his possession: and that a fine may be levied of, or common recovery suffered upon, this estate of freehold by disseisin; which feoffment, fine, and recovery, will in process of time bar the owner of the freehold and inheritance.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

There

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

There is a case, that must occasionally come before professional gentlemen, which is principally founded on the learning of disseisins:—Suppose A. to be possessed of a term of 1000 years, under a decree of foreclosure, made perhaps 50 or 100 years ago; and on account of the great length of time since the term was first created, it is impossible to ascertain the owners of the reversion in fee: in this case, if A. the termor is desirous of obtaining the freehold and inheritance, and for the reasons just given he cannot legally purchase the reversion, he may by a feoffment and fine absolutely acquire the fee; and as the reversioner is here unknown, and as there is no payment of rent, or the like, which would, according to Fermor's case, admit the possession of the reversioner, there can be nothing to obstruct the full force and operation of the feoffment and fine.

In a case of this kind, it seems advisable, that the term should be previously assigned to an indifferent person; that a feoffment with livery of seisin should then be made and a fine levied. The uses of the feoffment and fine may be declared either to the feoffor or a purchaser; but there should be a declaration

tion of the trusts of the term to attend the inheritance, not generally, but as acquired by the feoffment and fine.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

In *Brandlyn v. Ord*^a, Lord Hardwicke said, "that a fine levied by a *termor* for " years is a forfeiture; but the reversioner " has five years *after the expiration* of the " term to enter." The rule is confirmed by the case of *Whaley v. Tancred*^b; which was that of a feoffment made, and fine levied, by a lessee for years: and the reason of it is, because the lessee is trusted with the possession, and there is a privity between him and the lessor; and as Lord Hale observed^c, it is like a mortgage, where the mortgagor *continuing in possession* levies a fine.

But in the case above stated of a termor after a decree of foreclosure, there cannot, I conceive, be any privity between him and the reversioner. During the existence of the equity of redemption, there was indeed a

^a 1 Atk. 571.

Atkins. 3 Atk. 562. 141.

^b *Whaley v. Tancred*,

339. *Pomfret v. Wind-*

1 Vent. 241. T. Raym.

for, 2 Vef. 481.

219. See also *Shields v.*

^c Hard. 402.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

privity: but the decree put an end to the confidence between them; at least in the relation of mortgagor and mortgagee. The above case is rather more similar to that put in Margaret Podger's case^d: *lessee* for years, and the *lessor* are *both* disseised, and a fine is levied upon such newly acquired estate by disseisin; after five years run upon the fine from the time it was levied, the lessee and lessor are both barred. Now the feoffment in the principal case after the assignment of the term would create a disseisin, I imagine, not only as against the reversioner, but as against the assignee or trustee^e of the term. Though the case, cited from Margaret Podger's case, has been doubted^f; I do not know, that it has been expressly over-ruled. On the contrary, the distinction appears to have been recognized in *Whaley v. Tancred*.

I shall conclude by citing the opinion of Lord Hardwicke^g, who said, if a man

^d 9 Co. 105. b.

^e See 2 Vef. 481.

^f 2 Vent. 334.

^g 2 Atk. 631.

purchases

purchase an estate, which he sees himself has a defect upon the face of the deeds, a *fine* levied will be a bar; for the defect upon the face of the deeds is often the *occasion* of the fine's being levied.

As to the operation of a feoffment in creating an estate of freehold by disseisin; and the nature of the estate thus created.

G R A N T.

Description of
a grant.

THE principal conveyances at common law were by feoffment and grant; the former was applicable to *corporeal*, the latter to *incorporeal*, hereditaments; the transfer was complete in the one case by the livery of seisin; in the other, by the delivery of the deed, and in some instances by the additional ceremony of attornment. A grant was therefore said to be a conveyance *in writing* of property, which could not pass by livery of seisin.

The term, *grant*, is generally applied to conveyances by feoffment, fine, recovery, lease and release, bargain and sale, and covenant to stand seised. But the simple grant at common law is complete without any of the ceremonies peculiar to the above conveyances. It does not require inrollment,

ment^a; nor a prior lease for years, nor the consideration necessary to establish a covenant to stand seised to uses. Livery of seisin is altogether inapplicable to it, and it is not matter of record.

Description of
a grant.

But though the conveyance by grant at common law is confined to property lying *in grant*; yet that kind of property may be also transferred by conveyances, adapted to the transfer of corporeal hereditaments. I shall therefore in this place direct my enquiries, First, as to the several kinds of *incorporeal* hereditaments of a grantable quality, and the several conveyances by which they may be granted: 2dly, as to attornment, and the effect of the statute of inrollments and the 4th Anne c. 16: f. 9. upon the antient grant at common law: 3dly, as to the operative words of a grant: 4thly, as to the operation of a grant by tenant in tail.

(1.) Common of pasture, of turbary, of fishing, and of estovers, may in general be conveyed by way of grant, in fee, for

As to the several kinds of incorporeal hereditaments of a grantable quality, and the several conveyances by which they may be granted.

^a See Post. sec. 2.

life,

As to the several kinds of incorporeal hereditaments of a grantable quality, and the several conveyances by which they may be granted.

Common.

life, or years, from man to man *in infinitum*^b. But the books, though not very clear upon the subject, seem to make the following distinctions in respect of common of pasture. Common *appendant* for pasture cannot by grant or otherwise be severed from the land^c; neither can common *appurtenant*, if it be for cattle *levant and couchant*, or without number^d. But common *appurtenant* for a *certain number* of beasts may by grant be severed from the soil, and thereby made common *in gross*^e. As to common *in gross* in fee, it may be granted over, though it be *without number*^f: but it is said, that a grantee *for life*^g, or *years*^h of common of pasture (which must be understood of common *in gross*) for cattle without number, cannot transfer the same; unless the original grant be made to him *and his assigns*ⁱ.

^b Shep. T. 238, 239.

^c Perk. f. 104. See Daniel v. Hertford, Cro. Car. 542.

^d Drury v. Kent, Cro. Jac. 15. 1 Roll. ab. 402.

^e Ibid. and see Spooner

v. Day, Cro. Car. 432.

^f 2 Roll. ab. 46. pl. 15.

^g Perk. f. 103.

^h 2 Roll. ab. 46. pl. 16.

ⁱ Sed quære, and see Roll. supra.

Common,

Common, of the grantable quality just described, may be transferred by grant at common law^k; or it may be extinguished by a release to the tenant of the land^l; and common *certain* may be granted by fine^m, though not by recoveryⁿ. It seems doubtful, whether *before the statute of uses* common of pasture could have been conveyed by bargain and sale, or covenant to stand seised^o; but as that statute comprises all kind of *incorporeal* property, which may lawfully be granted by one to another, it will now pass by either of those conveyances.

As to the several kinds of incorporeal hereditaments of a grantable quality, and the several conveyances by which they may be granted.

A rent *in esse* may be granted or assigned, even before the grantor has seisin of it^p; but not during its suspension^q; and a rent-charge may be conveyed by fine^r and recovery^s, lease and release, bargain and sale,

Rents.

^k See Litt. f. 617. West. Symb. pl. 1. f. 294.

^l Shep. T. 322.

^m Ibid. 10. 1. Cruise 121.

ⁿ Pig. 96. 2 Cru. 168.

^o See W. Jones, 118.

127. Bro. tit. feof. al. uses, pl. 10.

^p Shep. T. 238. Perk. f. 91.

^q Shep. T. 238.

^r Ibid. 11.

^s See Pig. 97.

As to the several kinds of incorporeal hereditaments of a grantable quality, and the several conveyances by which they may be granted.

and covenant to stand seised ^t, as well as by the grant at common law.

So a rent may be reserved on, and created by a fine ^u, bargain and sale ^x, and consequently a lease and release. It may also be reserved out of the estate or seisin of a recoveror in a common recovery^y. But the grant of a rent-charge out of lands, of which the grantor is not seised at the time of the grant, is void; though the grantor should afterwards purchase the same lands ^z; unless perhaps the grant be by fine *executory* ^a. So no rent can be reserved out of a rent ^b, or other incorporeal hereditament ^c: and if a disseisee release to his disseisor, reserving a rent, such reservation is void ^d.

Remainders and reversions.

Vested remainders *in fee* and reversions may be granted or transferred by grant ^e, bargain and sale ^f, lease and release ^g, cove-

^t See Lade v. Barker, 2 Vent. 260. 266.

^u Shep. T. 5. 2 Rol. ab. 18.

^x Co. Litt. 144. a.

^y Cromwell's case, 2 Co. 69. b. 72. b.

^z Perk. f. 65.

^a Ibid. 65. 66. and

see Shep. T. 11. 243.

^b Shep. T. 238.

^c Co. Litt. 144. a.

^d Ibid.

^e Litt. f. 568.

^f Vaugh. 51.

^g Bntl. Co. Litt. 270. a. note 3.

nant

nant to stand seised^h, fineⁱ, or a release to the particular tenant^k; but not by a recovery^l, nor feoffment. So a remainder *in tail* can only be conveyed by fine^m. As to *contingent* remainders, they may be destroyed, as I have before observed, by feoffment, fine, or recovery: but they can only be conveyed by fine by way of *estoppel*, and perhaps by a common recoveryⁿ.

As to the several kinds of incorporeal hereditaments of a grantable quality, and the several conveyances by which they may be granted.

The interest, which a lessee has in his lease before entry, is capable of being assigned^o. But if A. make a lease for 40 years to B., and it is covenanted, that if the premises be well repaired at the expiration of the term, the lessee shall hold over for a further term of years; it seems doubtful, whether the interest of the lessee in the second term be assignable *at law*^p.

Interesse termini.

The proprietor of land may grant the emblements, or fruits and produce there-

Emblements.

^h 5 Co. 8. b. 11. Co. 46. b. 47. a.

ⁱ See Shep. T. 13.

^k Litt. f. 575.

^l 2 Cru. 30. 31.

^m 3 Co. 84. a.

ⁿ See Fearne, cont. Rem. 537. 4th edition, Weale v. Lower, Poll. 54.

^o Co. Litt. 46. b.

^p See Skerne's case, Moor 27.

As to the several kinds of incorporeal hereditaments of a grantable quality, and the several conveyances by which they may be granted.

Tithes.

of^a; and not only such as are actually upon the land at the time of the grant, but such as may afterwards grow thereupon, or arise out of it^o; for, say the books, the land is the mother and root of all fruits, and the proprietor of it is possessed of the present fruits *actually*, and of the future *potentially*^p. So a parson may grant all the tithe wool, that he shall have in such a year; but a man cannot grant all the wool, which shall grow upon his sheep, which he shall afterwards purchase; for he hath not the latter *actually*, nor *potentially*^q.

Advowsons.

Advowsons are conveyed by grant at common law^r; and as they may be limited to uses, they may be also transferred by bargain and sale, covenant to stand seised, and lease and release. So a fine may be levied of an advowson^s: and if it be *appendant* to a manor, a recovery may be suffered of it upon a writ of entry *en le post*^t. But if the advowson be *in gross*, the recovery must be

^a Perk. f. 57. 59.

^o 2 Roll. ab. 47. 48.

^p See Grantham v. Hawley. Hob. 132.

^q Ibid.

^r Litt. f. 617. Co. Litt. 332. a.

^s 8 Co. Rep. 145. a.

^t Dormer's case, 5 C. Rep. 40.

suffered

suffered upon a writ of right of advowson^u : or if it be suffered of the advowson, *together with a small quantity of land*, then it may be suffered upon a writ of entry *sur disseisin*^x.

As to the several kinds of incorporeal hereditaments of a grantable quality, and the several conveyances by which they may be granted.

A corrody *certain*^y, and services^z, are grantable in fee, for life, or years ; and so are feignories, and franchises ; such as views of frankpledge, and perquisites of courts ; to have waifs, wrecks, estrays, treasure trove, royal fish, forfeitures, and deodands ; the conuzance of pleas, or bailiwick ; fair or market ; a forest, chase, park, warren, or fishery, and the like^a.

Corrody, services, feignories, and franchises.

A tenant in fee-simple may grant the title deeds of his estate, and the grantee may either keep or cancel them : but not so as to a tenant in tail^b.

Charters.

On the other hand, there are several kinds of incorporeal property, which the policy

Offices of trust.

^u See 2 Cru. 167.

^x Baley v. University of Oxford. 2 Wils. 116.

^y Perk. sec. 103. 2 Roll. ab. 45.

^z Shep. T. 238. See

cus as to a corrody uncertain. 2 Roll 45.

^a Shep. T. 239.

^b Ibid. 241. 242. Co. Litt. 232. b.

As to the several kinds of incorporeal hereditaments of a grantable quality, and the several conveyances by which they may be granted.

of the law does not permit to be the subjects of grant or transfer. Thus offices of trust and confidence are not grantable; unless in some special cases, where they are expressly granted to a man and *his assigns*, or to him and *his heirs*°. So an annuity *pro concilio in posterum impendendo* cannot be transferred; unless the original grant thereof expressly authorize an assignment^d: and it has been lately determined, that the pay of an officer in the army is not assignable°.

Indeed in no case will the law permit the transfer of *choses in action*^f. Courts of equity however have in most instances supported assignments of them. A bond, the benefit of a decree or judgment^g, a seaman's wages^h, and the like *choses in action* may be transferred in equity; such equitable transfer being considered in the nature of an

^c Perk. sec. 99. 100. Shep. T. 239. 241. 2 Atk. 14. 332.

^d Perk. f. 101. 7 Co. 28. b. See Har. Co. Lit. 144. b. note 1.

^e Flarty v. Odum, 3 Term Rep. 681. Lidder-

dale v. Montrose, 3 Term. Rep. 248.

^f Co. Litt. 214. a. See 2 Black. Com. 442.

^g 3 P. W. 199. 200. ^h Crouch v. Martin, 2 Vern. 595.

agreement,

agreement, of which the court of chancery directs the performance.

(2.) Incorporeal property arising from, or consisting of rights to, land, and of the grantable quality before described, may be divided, as Mr. Fearné has observed, into two general classes. "The first, comprising such real hereditaments as consist of rights to future enjoyment of lands divided from the right of present possession, as *remainders* and *reversions*, together with such mixed hereditaments as consist in things issuing out of lands, or to be rendered, paid, or done by the tenants or owners of lands in respect to the tenure thereof. The other class, extending to all the residue of incorporeal hereditaments, namely, to those mixed hereditaments which, though they relate to lands, or some benefit thereout, or have a local relation, yet are distinct from the ownership or right of enjoyment of the lands themselves, or of any thing to be paid, rendered, or done by the tenants or owners of land in respect of the tenure thereof¹."

As to attornment, and the effect of the statutes of inrollments, and 4th Ann. c. 16. s. 9. upon the conveyance by grant.

¹ See Fearné's Posth. Works. 12.

As to attornment, and the effect of the statutes of inrollments, and 4th Ann. c. 16. s. 9. upon the conveyance by grant.

A deed was necessary to the transfer of every kind of *incorporeal* property; and as to the hereditaments falling within the latter of the above classes, they passed by the mere delivery and execution of the deed. But to the conveyance of those hereditaments, which are comprised in the first branch of the above division, the additional ceremony of *attornment* was necessary; which was nothing more, than the consent of the tenant of the land to the disposition or grant intended to be made. Attornment in cases of this kind was as necessary, as livery of seisin in the conveyance of corporeal estates.

It is to be observed, that a use might have been raised upon a bargain and sale for a pecuniary consideration, and upon a covenant to stand seised in consideration of blood or marriage; and by the mere operation of the statute of uses, the legal estate was transferred to the bargainee in the one instance, and to the covenantee in the other. No ceremony was made necessary by that statute to either of those conveyances: and therefore the solemnities of livery of seisin, and attornment, were, in fact, totally superseded by it: for as the most trifling pecuniary

niary consideration could raise a use for the benefit of the bargainee, it was no difficult matter to contrive, that every conveyance, not operating as a covenant to stand seised, should fall within the description of a bargain and sale. To correct this inconvenience occasioned by the statute of uses, so far as it related to *bargains and sales*, the statute of inrollments was made^k; which enacted, that no hereditaments should pass from one man to another, whereby any estate of freehold or inheritance should be made or take effect in any person, or any use or uses thereof to be made, *by reason only of any bargain and sale thereof*, except such bargain and sale be inrolled within six months next after the date thereof.

As to attornment, and the effect of the statutes of inrollments, and 4th Ann. c. 16. s. 9, upon the conveyance by grant.

From the evident import of the words of this statute, it seems clear, that if there had been a conveyance of *corporeal* hereditaments by livery of seisin, or a grant of *incorporeal* hereditaments falling within the first branch of the above division by deed and attornment, or, if coming within the se-

^k 27 Hen. 8. c. 16.

As to attornment, and the effect of the statutes of inrollments, and 4th Ann. c. 16. f. 9. upon the conveyance by grant.

cond branch of it, by deed only; the hereditaments, comprised in such conveyance or grant, could not have been said to pass *by reason only of a bargain and sale thereof*¹; but on the contrary, by reason of the livery in the one case, and of the deed and attornment, or deed only, in the other: and, that if there had been a grant of incorporeal hereditaments of the first description for a pecuniary consideration *without attornment*, such grant would have been considered as a bargain and sale within the statute, and would have required inrollment as such.

Thus the matter stood upon the principles of the common law, and upon the construction of the statute of inrollments. But some doubts have arisen upon the statute of 4 Anne. c. 16. f. 9.; by which it was enacted, “ that *grants* and conveyances by fine or
“ *otherwise* of any manors or rents, or of
“ the *reversion* or *remainder* of any messuages
“ or lands, shall be good and effectual to
“ all intents and purposes, *without any attornment* of the tenants of any such manors, or of the land out of which such

¹ See 2 Inst. 671. 1 Leon. 6.

“ rent

“rent shall be issuing, or of the particular
 “tenants, upon whose particular estates any
 “such reversions or remainders shall and
 “may be expectant or depending, as if
 “their attornment had been had and
 “made.”

As to attorn-
 ment, and the
 effect of the sta-
 tutes of inroll-
 ments, and 4th
 Ann. c. 16. §. 9.
 upon the convey-
 ance by grant.

It is manifest, that if this act be allowed to operate in the full extent of the above words, it will virtually repeal the statute of inrollments, so far as it related to hereditaments, which required the ceremony of attornment to transfer them.

As I have before observed, the statute of inrollments extended only to conveyances operating under the statute of uses by way of *bargain and sale*, for the purpose of introducing the ceremony of inrollment in the place of livery and seisin, and attornment, in cases where those solemnities were superseded by the operation of the latter statute. The act of inrollments was never meant to apply to those conveyances, which, operating under the principles of the common law, were complete without the assistance of, or any reference to, the doctrines and statute of uses. Therefore, when incorporeal property described

As to attorn-
ment, and the
effect of the sta-
tutes of inroll-
ments, and 4th
Ann. c. 16. s. 9.
upon the convey-
ance by grant.

described in the second of the above classes were intended to be conveyed, the grant thereof was perfect at the common law upon the execution of the deed only; and when that in the first of those classes was intended to be granted, the additional ceremony of attornment was necessary to the transfer. But in both cases *inrollment* was unnecessary. When indeed the ceremony of attornment was omitted in the latter case; the grant, if made for a pecuniary consideration, was considered as a *bargain and sale* within the statute. Why? Because it was otherwise incomplete: it could otherwise have no operation at all.

Then the statute of Anne was enacted, which expressly directs, that all grants of rent, reversions, and remainders, shall be perfect *without attornment*. Now if we are to form a construction upon this statute from the general import of the words, the effect produced by it will be, that all incorporeal hereditaments, in respect to the transfer of them, are placed upon the same footing: that they will all pass without attornment by deed only; and consequently, that grants of hereditaments, described in the

the

the first branch of the above division, being now perfect without attornment, and without the aid of, or any reference to, the statute of uses, will no more require inrollment under the statute, when made for a consideration in money, than grants of hereditaments falling within the second of the above classes.

As to attornment, and the effect of the statutes of inrollments, and 4th Ann. c. 16. §. 9. upon the conveyance by grant.

But Mr. Fearné has contended, that the statute of inrollments stands entirely unaffected by the statute of Anne respecting attornments; because it would be contradictory to all the rules, which hold in the construction of statutes, to extend such general indefinite words, as the words, *or otherwise*, in the statute of Anne, to the repeal of a preceding statute, unnoticed in the subsequent one ^m.

It appears to me, however, that the words of the statute of Anne express the meaning of the legislature very clearly and distinctly: and if the manifest intention of the statute cannot be effected without a partial repeal of a preceding one, I can see no reason why

^m See Fearné's Posth. Works, 32, 33.

the

As to attornment, and the effect of the statutes of inrollments, and 4th Ann. c. 16. §. 9. upon the conveyance by grant.

the rule of law, which says, that *leges posteriores abrogant priores*, should not take place. The two statutes appear perfectly repugnant to each other, so far as they relate to incorporeal hereditaments, which required attornment to pass them: and I can see nothing contradictory to the rules, usually adopted in the construction of statutes, in considering the former statute virtually repealed by the latter to the extent of such repugnancy.

But an evident inconsistency would result from the construction contended for by Mr. Fearne. Suppose a voluntary grant of hereditaments comprised in the first of the above classes, without either a good consideration to support it as a covenant to stand seised, or a pecuniary one to establish it as a bargain and sale; as this grant does not interfere with the statute of inrollments, there can be no doubt, but that it would be good by the statute of Anne *without attornment*; and yet, according to Mr. Fearne's construction, that statute would be altogether inapplicable to another grant of *the same hereditaments, and under the same circumstances*, excepting only in the trivial, and perhaps accidental one of having the consideration of a shilling,

a shilling, or a penny, so as to make it a bargain and sale within the statute of in-
rollments.

(3.) The word, *grant*, is the most proper for the transfer of incorporeal hereditaments. But it is not absolutely necessary in grants, strictly operating as such at common law by the mere delivery of the deed. Therefore it has been determined, that words of covenantⁿ, or an instrument in the shape of an obligation^{*}, may amount to a grant of a way, or a rent-charge.

As to the operative words of a grant.

The word, *grant*, is essentially requisite in those cases only, where the conveyance, by which the *incorporeal* property is intended to pass, is *exclusively* applicable to the transfer of *corporeal* hereditaments; or being applicable to the transfer both of corporeal and incorporeal property, some ceremony, necessary to the completion of it, is omitted. Thus, no incorporeal property can pass by a feoffment and livery, unless the word

ⁿ Mountjoy's case, 3 Lev. 305. 4 Leon. 147. ^{*} Co. Litt. 147. a. 2 Roll. ab. 424.
² Vef. 9.

As to the operative words of a grant.

grant be used^p; and when a conveyance is intended to operate as a release, surrender, or confirmation, and such release, surrender, or confirmation is defective, by reason that the releasee, surrenderee, or confirmee, has no estate to support the conveyance as a release, &c., or upon any other account; then such defective conveyance cannot operate as a *grant* of the *incorporeal* hereditaments intended to pass, unless the operative word, *grant*, be therein particularly applied to the transfer^q. So it has been determined^r, that where a *reversion* was intended to be conveyed by *bargain and sale*, by the words, *bargain and sell* only (the conveyance being void as a bargain and sale for want of inrollment), it should not pass by way of grant at common law with attornment.

^p See the opinion in 1 Bridg. con. 323. 2 Roll. ab. 56. pl. 2. It should seem from the books, that a feoffment of a *reversion* or *remainder*, with the subsequent *attornment* of the tenant, would have amounted to *grant* be-

fore the statute of Ann. See 2 Roll. ab. 56. pl. 13. 2 Bac. ab. 491.

^q See Litt. f. 547. 542. Co. Litt. 301. b. Cowp. 600.

^r Cro. Jac. 210. Moor 34. pl. 113.

As incorporeal hereditaments may be surrendered¹, released², and limited to uses³, they may consequently be conveyed by surrender, lease and release, and bargain and sale, without the word, *grant*⁴; because there are other particular terms appropriated to each of those conveyances.

As to the operative words of a grant.

(4.) A grant at common law passes such an estate only in the property conveyed, as the grantor may lawfully transfer. It consequently does not work a *discontinuance*, when made by tenant in tail of an advowson, common, remainder, or any other inheritance lying in grant⁵.

As to the operation of a grant in working a discontinuance.

¹ Co. Litt. 338. a.

² Shep. T. 321. 322.

³ See ante, 1 vol. 111. and post. tit. Bargain and Sale sec. 6.

⁴ See as to a lease and

release, Mr. Booth's opinion in 2 vol. of cases and opinions. 144.

⁵ Litt. sec. 616, 617.] Co. Litt. 332. a.

BARGAIN AND SALE.

Description of
the conveyance
by bargain and
sale.

(1.) **T**HE conveyance by bargain and sale was introduced before the statute of uses, and originated from an equitable construction of the court of chancery. A bargain was made, or a contract entered into, for the sale of an estate; the purchase-money was paid, but there was either no conveyance at all of the legal interest, or a conveyance defective at law by reason of the omission of livery of seisin, or attornment: that court properly thought, that the estate ought in conscience to belong to the person, who paid the money, and therefore considered the bargainor or contractor as a *trustee* for him.

An equitable interest in land, thus raised and conveyed in the first instance by the payment of money upon a mere contract,
or

or upon a conveyance unoperative at law, became, in process of time, transferrable by a formal conveyance under the name of a bargain and sale.

Description of
the conveyance
by bargain and
sale.

The bargainee, entitled to the use by virtue of this equitable conveyance, became immediately seised of the possession by the statute of uses; and the operation of that statute, as I have before observed, tended in effect, to supersede altogether the solemnities of livery of seisin and attornment: for whenever a pecuniary consideration was introduced into a conveyance, unaccompanied by livery of seisin, or attornment, such conveyance immediately became a bargain and sale; and the possession was thereupon transferred to the bargainee without any other ceremony, than the mere delivery of the deed. Therefore, to restore in some measure the policy of the common law, in adding notoriety to the transfer of property, the statute 27 Hen. 8. c. 16. directs, that every conveyance by *bargain and sale* shall be inrolled within six months after the date thereof.

As to the possession of the bargainee under the Statute of uses,

(2.) The possession or rather legal estate, thus transferred by the operation of the statute of uses, is equivalent, in most respects, to a possession or legal interest acquired by an actual entry or attornment under a conveyance operating at common law. Therefore if a bargain and sale be made for years of land in the possession of the bargainor, such estate for years is capable of receiving a release of the reversion before an actual entry by the bargainee^a; but it seems doubtful, whether the bargainee can maintain an action of *trespass* before an actual entry^b. So a bargainee of a reversion may avow for rent, or bring an action for waste without attornment^c; but it seems, that he must give notice of the bargain and sale, before he can take advantage of a condition for non-payment of rent^d. It is said, that a bargainee can never vouch by force of any warranty annexed to the estate of the

^a See *Lutwich v. Mitton*. Cro. Jac. 604.

^b 1 Vent. 361. Cro. Jac. 604.

^c 6 Co. 68, a.

^d Cro. Jac. 146. 476. 5 Co. 113. See *Ow.* 69.

land,

land, because he is *in* in the *post*^e; but that he may rebut by virtue of it^f.

(3.) A *pecuniary* consideration is necessary to raise a use upon this conveyance^g; therefore the consideration of a long acquaintance, or of friendship^h, or of natural love and affectionⁱ, or of marriage^k, or that the bargainee is bound in a recognizance for the bargainer^l, cannot create a use upon a bargain and sale.

Consideration necessary to support a bargain and sale.

But courts of equity, which originally created a use from motives of conscience upon payment of a *valuable* consideration, afterwards permitted it to be raised and transferred upon an actual conveyance by bargain and sale for any pecuniary considera-

^e 1 Co. 125. a. Gilb. 102. Sed contra, Shep. 222.

^f 2 Roll. ab. 786, 787. pl. 1.

^g See 1 Co. 176. a. Note, in *Barker v. Keat*, 2 Mod. 252, it was said, that the reservation of a *pepper corn* would raise a use in a bargain and sale

for a year, in support of a *common recovery*. See

1 Freem. 249.

^h 2 Roll. ab. 783.

ⁱ *Osborn v. Churchman*, Cro. Jac. 127.

^k *Croffing v. Scudamore*, 1 Vent. 137.

^l *Ward v. Lambert*, Cro. El. 394.

Consideration
necessary to sup-
port a bargain
and sale.

tion of the most trifling amount ; upon pay-
ment of five shillings, or upon the reserva-
tion of a rent of twelve pence ^m.

The actual sum, paid by the bargainee,
need not be stated, if the conveyance be
expressed to be made in consideration of a
certain ⁿ or *competent* ^o sum ; nor is there a
necessity, that the money should be paid
upon the execution of the bargain and sale ;
for such bargain and sale may be made either
conditionally, that a sum of money shall be
paid upon a subsequent day ^p, or absolutely,
in consideration of a future payment ^q, or of
a sum paid previously to the execution of
it ^r. But if a bargain and sale be made for
divers good causes and considerations, no use
can be raised upon such general considera-
tion ; and yet the conveyance may be ren-
dered valid by an averment, that money
was actually paid ^s. Indeed it was formerly
determined, that where a particular confi-

^m 2 Roll. ab. 787.

788. 10 Co. 34. a.

ⁿ 2 Roll. ab. 786.

^o Moor 570. in Fisher
v. Smith.

^p 1 Leon. 6.

^q Dy. 337. a. in pl.

34.

^r 3 Keb. 201.

^s See 1 Co. 176. a.

deration

deration was expressed in a deed, an averment of another might be made^t; but it is now said, that if in a deed the consideration of money be expressed, and afterwards the parties attempt to aver the consideration of blood, such averment cannot be made; for that it would be of mischievous consequences; and liable to the danger of perjury, which the *statute of frauds* intended to prevent, to suffer parol evidence to prove, that the consideration of blood and kindred was intended, contrary to that of money particularly expressed in the deed^u.

Consideration
necessary to sup-
port a bargain
and sale.

It appears from Roll's abridgment^w, that if a man, in consideration of a certain sum paid by B., bargain and sell his lands to A. for life, remainder to C. in fee, this is good; for though A. and C. did not pay the consideration, yet it is evident, that it was paid upon their account; or that if the bargain and sale had been made to B. for life, with many remainders over, the consideration might well extend to those in remainder.

^t 1 Co. 176. a. 2 Co. way, 2 P. W. 204.
76. a. b.

^w 2 Roll. ab. 784. pl.

^u Clarkfon v. Han- 6, 7. Winch. 61.

Roll indeed puts the case of a covenant to stand seised *for money*; but such covenant would at this day operate as a bargain and sale.

The operative words.

(4.) The words of transfer, applicable to this conveyance, are, *bargain and sell*; but they are by no means necessary, nor material to its operation. If a man for a pecuniary consideration, by deed indented, *covenant to stand seised* to the use of another person^x, or *give and enfeoff*^y, or *alien, grant and demise* to him^z; such deed, if properly inrolled, will operate as a bargain and sale. In Fox's case^a it was said, that if it should appear from any clause in a deed, that it was the intention of the parties to pass land by a common law conveyance, there no use should be raised. But it has been expressly determined to the contrary. A. by deed indented, conveyed in the following words; "I the said A. have *given, granted, and confirmed* for a certain piece of money, &c.;" the *habendum* was to the feoffee, with war-

^x 8 Co. 94. a. 7 Co. 40. in Bodel's case. 1 Vent. 138.

^y 3 Leon. 16.

^z 8 Co. 94. a. See Taylor v. Vale, Cro. Isl. 166.

^a 8 Co. 94.

ranty

ranty against A. and his heirs; and there was a *letter of attorney to make livery and seisin*. The deed was *inrolled* within one month after the making of it; and the attorney, after four months from the delivery, made livery of seisin. It was the opinion of the whole court, that the conveyance should operate as a *bargain and sale*^b.

The operative words.

If a term of years be created, in consideration of a sum of money, by the words *demise, grant, bargain, and sell*^c, or by the words, *demise* and *grant*^d only; the grantee is at liberty to accept of the conveyance as a demise at common law, or as a bargain and sale. But it is said, that when a conveyance may take effect either at the common law, or under the statute of uses, it shall operate at the common law, unless the intention of the parties appear to the contrary; therefore if it be intended, that a term of years should be created by bargain and sale, the words, *bargain and sell*, only should be applied to the transfer, for the

^b 3 Leen. 16. ca. 39.

^c Heyward's case, 2 Co. 35.

^d See 1 Mod. 262,

263. 2 Mod. 252. Barker v. Keat.

purpose

purpose of avoiding any uncertainty as to the operation of the deed.

Who may convey by bargain and sale.

(5.) There must be a use, and a seisin to serve it, in every bargain and sale; and it must follow, that a person, incapable of standing seised to a use, cannot transfer lands by this conveyance^e. But an exception to this rule appears to have been attempted in favour of a corporation in the case of *Holland v. Boins*^f. In that case it was said, that though a corporation could not stand seised to a use, yet it might *charge* its own possessions with a use; a distinction certainly incompatible with a fundamental rule in the construction of uses; that the use is not annexed to, nor chargeable upon, the land. It is remarkable, that this very notion of *charging* the land with a use was considered in the celebrated case of *Chudleigh*; and it was there mentioned as an *absurdity*^g, because, if adopted, it would have the effect of enabling an alien, the king, a corporation, the lord by escheat, &c. to stand seised to

^e See Gilb. uses, 285. Leon. 175.

Cro. Jac. 50.

^g See 1 Co. 127. a.

^f 2 Leon. 121. 3

uses. However to prevent any serious consequences, which may arise from the determination in the case of Holland and Boins, it is usual in practice to make a corporation convey either by feoffment with livery, or by lease and release, with an actual entry by the lessee for a year.

Who may convey by bargain and sale.

(6.) All corporeal hereditaments, of which the bargainor has a *seisin*, and all incorporeal hereditaments in *actual existence*, may be conveyed by bargain and sale; because they may be limited to uses^h. So a trust declared upon a legal estate, and an equity of redemption, may be transferred by this conveyanceⁱ.

What property may be conveyed by bargain and sale.

A man seised in fee may convey by bargain and sale for a term of years; but no chattel interest already created can be transferred by bargain and sale^k; because the statute requires a seisin to serve uses, and the

^h See ante, 1 vol. 111. and ante tit. Grants. Sec. (1.)

ⁱ See *Oldin v. Samborn*, 2 Atk. 15. It has been holden, that the

word, *seisin*, is applicable to a trust estate. See *Shrapnell v. Vernon*, 2 Bro. 268. 272.

^k *Gilb. uses*, 286.

owner

owner of a chattel interest can only have a possession¹.

No use can be limited upon the estate of the bargainee; nor any future use out of the seisin of the bargainor.

(7.) As no use can be limited to arise out of a use, it follows, from the above description of this conveyance, that a use cannot be limited upon the legal estate of the bargainee, so as to be executed by the statute^m. Neither can there be a *scintilla juris* or possibility of seisin remaining in the bargainor, after the bargain and sale, to serve a use limited upon a future event; because the pecuniary consideration paid, or supposed to be paid, by or on account of the bargainee, and which constitutes the foundation of the bargain and sale, appropriates the use exclusively for his benefit. The limitation of the use to the bargainee is a consequence arising from the payment of the money; and beyond that limitation the original consideration and contract do not extend. Therefore if there be a bargain and sale for the life of the bargainee, with a power for him to make leases, a lease made

¹ Poph. 76. See ante, 1 vol. 198. and ante tit. Feoff. Sec. (9.) 3.

^m See Tyrrell's case, Dy. 155. a. 1. And. 37. 1 Leon. 148.

under that power cannot operate as an appointment of the use to the lessee ^a.

No use can be limited upon the estate of the bargainee; nor any future use out of the seisin of the bargainor.

A. conveyed by bargain and sale to B. and his heirs, upon condition, that if A. paid a certain sum to B., he might re-enter, and thereupon stand seised to the use of himself and his heirs, until he attempted to alien without the consent of B., and then to the use of B. and his heirs; and levied a fine to those uses. A. paid the money, entered, and conveyed the land without B.'s consent. It was said, that no use could arise to B. upon the alienation; because the *bargainor*, entering for a condition broken, was in of his old use, and could stand seised to no other ^o.

But it should seem, that a covenant may be contained in a bargain and sale, on the part of the bargainee, which will raise a use out of his legal estate upon a future event. Thus if a bargainee covenant, that upon payment of a sum to him he will stand seised to the use of the bargainor and his heirs;

^a Poph. 81. See also 2 Roll. 260. Cro. J. 181.

^o Holloway v. Pollard, Moor 761.

the

the payment of the money will accordingly raise the use ^p. But in this case, the original bargain and sale, and the covenant contained in it, must be considered as two conveyances ^q, founded upon distinct pecuniary considerations; and consequently, I conceive, there should be two inrollments.

Of the operation of a bargain and sale by tenant in tail or for life.

(8.) A bargain and sale is one of those harmless conveyances, which operate merely upon what the grantor may lawfully convey. It therefore cannot work a discontinuance ^r, create a forfeiture ^s, nor destroy contingent remainders dependant upon a particular estate ^t. But it is settled, that if tenant in tail convey in fee by bargain and sale, the bargainee has a base fee determinable upon the death of tenant in tail by the entry of the issue ^u.

^p See Moor 35. pl. 115. Dalis 38.

^q 2 Roll. ab. 786. (M.)

^r Gilb. uses 297. Co. Litt. 332. b.

^s Gilb. uses 102. See Sir William Pelham's

case, 4 Leon. 123.

^t Gilb. uses 140. Fearne 472. 4th edit. Hard. 416.

^u Seymour's case, 10 Co. 95. Machill v. Clark, 2 Salk, 619. See 1 Atk. 2.

(9.) The

(9.) The statute of inrollments requires, that the bargain and sale should be by deed indented^w; and that the inrollment of the deed should be in *parchment*^x within six *lunar*^y months from the *date*^z, if the deed have a date; but if not, then from the *delivery*^a. The inrollment may be made either upon the day of the date^b, or upon the last day of the six months, reckoning the day of the date *exclusively*^c.

Ceremonies required by the statute of inrollments.

(10.) The legal estate is vested in the bargainee by the statute of uses upon the execution of the deed; but the statute of inrollments obstructs the operation of the conveyance, until it be inrolled. The inrollment however has, for most purposes, a relation to the delivery of the deed^d: and thereby avoids all mesne incumbrances^e, and conveyances^f made by the *bargainer* between

Of the relation of the inrollment to the delivery.

^w See 3 Leon. 16, 17. Dy. 218.

^x 2 Inst. 673. Dy. 218.

^y 2 Inst. 674. Shep.

T. 223.

^z Ibid.

^a Ibid. Hob. 140.

^b 2 Inst. 674.

^c Thomas v. Popham,

^d 2 Inst. 674.

^e Mullery v. Jennings
2 Inst. 674. See Flower v.
Baldwin, Cro. Car. 217.

^f Thomas v. Popham,
Dy. 218. See Moor 41.

4 Co. 71. a.

the

Of the relation
of the inroll-
ment to the de-
livery.

the delivery and inrollment. A bargainee before inrollment may be a good tenant to the *præcipe* for suffering a recovery^g; and if he die, his wife shall have dower, in case the deed be afterwards inrolled^h; but not so as to the wife of the *bargainor*ⁱ. If there be two joint tenants, and one of them bargain and sell the estate in fee, and then the other die before the inrollment; only a moiety shall pass to the bargainee, though the deed be afterwards inrolled^k; and though the words of the bargain and sale comprise the whole estate^l. So if a bargain and sale be made of a manor with an advowson appendant, and the church become void before the inrollment, the bargainee shall have the presentment^m.

The bargainee of a reversion shall have the rent incurred between the delivery and

^g 2 Inst. 675. Owen 70.

^h Cro. Car. 217. cont. Shep. T. 226. Ow. 70. 150.

ⁱ Shep. T. 227. Cro. Car. 569.

^k Co. Litt. 186. a. Cro. Car. 217. 569.

Bro. Inr. pl. 9.

^l Ow. 70.

^m Cro. Car. 217. See 2 Bulf. 8, 9.

inrollment

inrollment of the deed^a: but if the rent be paid by the tenant to the bargainor, the payment is lawful, and the bargainor is not compellable at law to account for it^b. So if a bargainee grant a rent before inrollment, it is a good grant, if the deed be afterwards inrolled^c.

Of the relation of the inrollment to the delivery.

A bargainee may receive a release from a stranger before inrollment^d; but it is said, that if a bargain and sale be made to A. and B. and their heirs, and A. release to B. before inrollment, such release is void^e. So if a disseisor bargain and sell the lands, and the disseisee release to the bargainee before inrollment, the release is unoperative^f; but a release to the bargainor will, in such case, enure for the benefit of the bargainee^g.

But if a bargainee before inrollment convey the estate by bargain and sale to another person, and then inroll the first deed; the second bargain and sale is void, though

^a Latch. 157. 1 Sid.

310.

^b Ow. 150. 69. Dy.

218. Godb. 156.

^c Cro. Car. 217.

^d VOL. II.

^e 2 Inst. 675.

^f Shep. T. 227.

^g 1 Roll. rep. 425.

^h Mockett's case,

Shep. T. 227.

F

if

Of the relation
of the inroll-
ment to the de-
livery.

it should afterwards be inrolled^w. So a lease made by a bargainee before inrollment is not valid^x.

Though the inrollment has a relation to the delivery of the deed, and thereby avoids all mesne incumbrances and conveyances made by the *bargainor*; yet it does not divest any estate lawfully settled in the bargainee in the interim^y; therefore if a feoffment be made, or fine levied by the bargainor to the bargainee before inrollment; he shall take by the feoffment, or fine, and not by the bargain and sale^z.

(11.) By a provision in the statute of inrollments, that act does not extend to hereditaments lying within any city, borough, or town corporate, wherein the mayors, recorders, or other officers have authority

^w Sir Robert Barker's case, Shep. T. 227. Bellingham v. Alfop. Cro. Jac. 52. 409. See Perry v. Bowes, 1 Vent. 360. T. Jones 169.

^x Cro. Car. 110. Carth. 178.

^y 4 Co. 71. a.

^z 2 Inst. 671, 672. Shep. T. 226. Northumberland's case. Moor 337. Popham's case, 4 Leon. 4. ante, tit. Grant, sec. 2.

to inroll deeds. A bargain and sale therefore of such hereditaments operates to all purposes from the date or delivery of the deed^a.

Of the relation of the inrollment to the delivery.

^a See Chibborne's case, Dy. 229, Darly v. Bois, Yelv. 123.

LEASE AND RELEASE.

Description of a
release at the
common law by
way of enlarg-
ment.

(1.) A RELEASE, enlarging an estate already created, is a conveyance derived wholly from the common law; and it requires, in all cases, privity of estate between the releasor and releasee^a. Thus if land be in the possession of a lessee at will^b, for life, or years^c, there exists a privity of estate between him and the lessor; and the latter may execute a release of his estate either to the lessee himself, or to his assignee^d. So the person, seised of the inheritance in reversion or remainder, may release it to the tenant of the freehold; whether such tenant be by the curtesy or in dower^e, or for his own life, or for that of another^f.

^a Co. Litt. 272. b.

^b Litt. sec. 460.

^c Ibid. 465.

^d 2 Roll. ab. 401. pl.

^e Dy. 4. pl. 2.

^f 2 Roll. ab. 401. pl.

8.

^g Co. Litt. 273. b.

But

But a release of this kind will not operate upon the possession of an under-lessee², or of a tenant at sufferance^h, by *eliget*, or statute merchant¹.

When no estate precedes the lesser estate intended to be enlarged by the release, an *actual possession* is necessary at the common law to the operation of the release^k. But if there be tenant for life, remainder for life, with the reversion in fee; the person in reversion may release to him in remainder for life¹; for though he has no possession, yet he has an estate actually vested in him.

(2.) The release, just described, was a *secondary* conveyance, operating upon an estate originally created without any reference to it. But in very early periods of our history, it was not unusual to execute a lease for two or three years, completed by the actual entry of the lessee, for the express purpose of

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lease.

² Co. Litt. 273. a. Dy. 12. Co. Litt. 273. b.
4. b. pl. 2. ^k Co. Litt. 270. a.
^h Co. Litt. 270. a. Lit. sec. 459.
271. a. ¹ 2 Roll. ab. 400. pl.
¹ 2 Roll. ab. 401. pl. 4. 5. Co. Litt. 270. a.

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enabling him to receive a release of the inheritance ; and which was accordingly made to him within a short time afterwards. The lease and release, executed in this manner, transferred the freehold of the releasor as effectually, as if it had been conveyed by fine or feoffment. Whether the lesser estate were merged, or whether it were merely enlarged by the accession of the greater ; it certainly did not exist separately from it. Thus a lease for years, and a release founded upon it, had the operation of *one* conveyance ; and so far back as the reign of Hen. the 4th, they are considered as equivalent to a feoffment in passing the freehold^m. In the year book, 21 Ed. 4. 24. the conveyance by lease and release is expressly mentioned.

An entry by the lessee for years was necessary to perfect his lease at the common law. He could not receive a release, until he had acquired the actual possession. It is therefore probable, that the conveyance by lease and release was not frequently adopted before the statute of uses ; because it was

^m See Year Book, 11 Hen. 4. 33.

nearly

nearly as inconvenient, and not so powerful in its operation, as a feoffment with livery. But soon after that statute, a conveyance, differing only from the *lease and release* at common law in the manner of creating the previous estate for a year, but retaining the same name, derived from the same principles, and operating in the same manner, was introduced, as it is said ^a, by Sergeant Moore; a conveyance, which has almost wholly superseded that by feoffment.

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lease.

A bargain and sale being made for one year upon a pecuniary consideration, the legal estate is immediately vested in the bargainee by the statute of uses. This bargain and sale does not require *inrollment*^o under the statute 27 Hen. 8. c. 16.; and it is now settled beyond controversy, that the estate, vested in the bargainee upon the execution of the deed, is capable of receiving a release of the reversion before or without an *actual entry* by him ^p. A release, generally dated the day after the bargain and sale, is

^a See 2 Black. Com. 94. a.

339.

^p Cro. Car. 110. Cro.

^o 2 Co. 36. a. 8 Co. Jac. 604, Carter 66.

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accordingly made; and thus an estate of freehold is transferred without entry, inrollment, or livery of seisin.

It operates by
transmutation
of possession.

(3.) It is immaterial to the operation of the *release*, whether the previous estate for a year be created by a bargain and sale under the statute of uses, or by a lease at common law, perfected by the entry of the lessee. In either case the conveyance operates by *transmutation of possession*. It transfers a *seisin* to the releasee; and if the use be declared to him, he takes an estate not by virtue of the statute of uses, but in the course of possession at the common law¹. But if the use be declared to any *other* person or persons, then it is executed by the statute; and it is now usual to make settlements of freehold estates by lease and release; in which the limitations of uses are frequently various and intricate.

Who may con-
vey by it.

(4.) When the release is founded upon a bargain and sale for a year, it is necessary, that the person, making the conveyance, should be capable of standing seised to a use.

¹ See an excellent vol. of cases and op. 281.
opinion of Mr. Booth, 2 289.

But

But if the releasor be incapable of standing seised to a use, then the estate for a year should be created by a lease at common law, accompanied by an actual entry on the part of the lessee.

Who may convey by it.

(5.) The conveyance by lease and release, like a bargain and sale, does not work a discontinuance^{*}, nor create a forfeiture[†]: neither can it destroy contingent remainders[‡].

Operation of a lease and release.

(6.) It has been doubted, whether there can be a *resulting use* in fee upon a conveyance by lease and release.

Whether there can be a resulting use upon a lease and release.

H. brought covenant as assignee of a reversion, and shewed that the lessor, in consideration of five shillings, bargained and sold to him for a year, and afterwards released to him and his heirs, *virtute quarundam indentur^{*} bargainie venditionis et relaxationis, necnon vigore statuti de usibus*, &c. he was seised in fee: and it was objected, that the use must be intended to be to the *releasor* and his heirs, because no consideration of the release,

^{*} Litt. f. 598. 606.

[†] Litt. f. 690.

[‡] See Fearn, 473. 4th ed.

nor

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ing use upon a
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nor express use, appeared by the plead-
ing^u,

It was argued in this case^v, that there could be no resulting use on a lease and release: that nothing passes to the lessee in possession, but by way of *enlargement* of his estate; that it does not operate to give a new estate of the reversion, but to increase the estate in possession, according to the words of the release: that if the release enure only to enlarge the estate, the interest enlarged must be to the use of the lessee, or it cannot be said to be an encrease of it: that if the practice had not prevailed to the contrary, it were very odd to limit the use of a release to any but the lessee; for which reason it is, that we find it expressed in the clause in the lease, on which the lessor intends to build his release, that the intent of the lease was to pass an estate by release upon it, for the benefit or use of a third person:

^u Shortridge v. Lam-
plugh, 2 Salk. 678. 7
Mod. 71. 2 Ld. Raym.

798.

^v 7 Mod. 74.

That

That it would be absurd to say, that my conveyance should have no other operation, but to extinguish or merge the estate, which the grantee has already, in order to have it brought back to me; and what need could there be of such a way? If the party had any such intent, it might soon be done by a surrender.

Whether there can be a resulting use upon a lease and release.

That if it had been expressed in the deed of release, that he had already made him a lease for *years*, and that for the enlargement of that estate he made the release, there could be no doubt, but that it would be to the use of the *releasee*; and there is no difference between the cases, since this release, in its own nature, enures by way of enlargement: besides, here is also a valuable consideration; for the lease and release being but *one* conveyance, the five shillings, expressed to be the consideration of the *lease*, shall be participated to the release; and also the acceptance of the release is in its own nature a consideration; for it implies an alteration of the estate of the lessee, which, to consent to, is a consideration moving from the lessee; and the only motive of the
lessee's

Whether there
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ing use upon a
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lessee's parting with the old estate was to get a new one.

On the other side ^x it was urged, that before the statute 27 H. 8. c. 10. if A. made a feoffment, levied a fine, or suffered a recovery without a use declared, and without any consideration, the feoffee, conveyee, and recoveror stood seised of the said lands to the use of A.: that since the statute of Hen. 8. the law as to this matter is not altered: for the said statute only intended to execute the use to the possession, and by that means to destroy the use; but it did not intend to make any other thing pass by the conveyance, than that which passed before: that there was the same reason, that the use should not pass in a *release* without any consideration, or express declaration, as in a feoffment, fine, and recovery.

To the objection, that this release enured by way of enlargement of the lease for a year, and therefore would participate of the consideration of it, and that the lease and release made but *one* conveyance, it was

^x 2 Ld. Raym. 800.

answered,

answered, that though the lease and release made but one conveyance as to the passing of the fee, yet they were in truth *distinct* conveyances, and had different operations, the one by the statute of uses, and the other by the common law: that as to what is said, that the release enures by way of enlargement of the estate of the lessee, it is true, that it gives him a greater estate than he had before; but that notwithstanding it destroys the estate for years by *merger*; and it cannot participate of the consideration contained in the *lease*, which is perfectly distinct.

Whether there can be a releasing use upon a lease and release.

However, Holt, C. J. without considering the operation of the conveyance^y, maintained, that the manner of pleading the release as above, to the releasee, was good; and that if a *feoffment* be pleaded in the same manner, without shewing the use or consideration, with an averment *virtute cuius* the feoffee was seised, the use shall be intended to be to the feoffee: that that was the form of pleading *before* the statute, and the statute has not altered, but rather confirmed, this manner of pleading.

^y See 2 Salk. 678.

Whether there
can be a result-
ing use upon a
lease and release.

Lord Hardwicke, in the case of *Lloyd v. Spillet*², considered the conveyance by lease and release exactly in the same light as that by *feoffment* with respect to a resulting use; and though he held, that either an express declaration, or consideration however trifling, would carry a use to the releasee, yet the whole tenor of his argument gives us reason to believe, that he took it to be a settled point, that without the one or the other the use would result to the releasor¹.

Supposing a release to be made to a lessee for years, whose estate was not originally created with a view of receiving such release, there can be no doubt, but that the releasee would be entitled to the use and legal estate: because the intention of the parties and the purposes of the release would be entirely frustrated, if the use should result to the releasor. But when a lease, or bargain and sale for a year, is made for the *express purpose* of receiving a release, they must be considered as *one* conveyance, operating by way of transmutation of the possession or seisin to

¹ Barn. Cha. Rep. 1 Wood's Con. 776. and
384. 2 Atk. 143. note, 2 Doug. 745.

² See Lil. Con. 233.

the releasee; and admitting, that the doctrine of resulting uses was introduced in order to regulate and carry into effect the *intention* of the parties, and that the payment of a pecuniary consideration, however inconsiderable, was a criterion of such intention, I cannot see how the conveyance by lease and release can in this respect differ from that by feoffment, fine, or recovery. In the above case of *Shortridge v. Lamplugh*, both Holt and Powell agreed^b, that if a particular use were limited on the release, the remainder would result. Why? Because such construction would favour the *intention*. The notion of resulting uses was adopted for that very purpose.

Whether there
can be a resulting
use upon a
lease and release.

(7.) It is necessary at the common law, that an *exchange* or a *partition* should be completed by an actual entry*. But it is now usual to make an exchange by a bargain and sale for a year, and a release grounded upon it; and if joint-tenants or tenants in common concur in a conveyance by lease and release, and thereby transfer the entire seisin to the releasee, they may effec-

^b 7 Mod. 77.

^c See Co. Litt. 266. b.

Whether there
can be a result-
ing use upon a
lease and release.

tuates a partition by limiting the uses of the specific allotments. It is unnecessary to observe, that in all these cases the possession is executed by the statute without or before entry.

of a pecuniary consideration, however, considerable, was a condition of such partition. I cannot see how the conveyance by lease and release, can in this respect differ from that by lease and release, or otherwise. In the above case of *Sherrington v. Sherrington*, both Holt and Powell agreed, that if a particular use were limited on the lease, the remainder would follow. Why, then, could such condition prevail against the remainder? The notion of releasing was adopted for that very purpose.

(2.) It is necessary, at the common law, that an exchange or a partition should be completed by an actual entry. But it is now usual to make an exchange by a lease and release for a year, and a release granted upon it, and in partition to or between the common owners a conveyance by lease and release, and thereby to give effect to the partition.

A N

APPOINTMENT.

(1.) **W**E must distinguish between an appointment and the declaration of a use. The latter is that original disposition of the use by the express consent of the parties, which prevents it from following any implied designation, which the rules of law might otherwise prescribe: but the former is a limitation of the use by a separate instrument derived from, and conformable to, a power reserved, or contained, in the original conveyance, by which the seisin to serve those uses is transferred. The limitation of uses thus made under the power must necessarily alter, abridge, or suspend the use previously *declared* upon such original conveyance. Such are the powers usually reserved in settlements of leasing, jointuring, selling, exchanging, and charging^d.

Description of
an appointment.

^d See ante, 1 vol. ch. 2. f. 5. (8.)

The nature of
the estate trans-
ferred by the
appointment.

(2.) Every appointment, when made immediately to the appointee, must consequently vest the use or legal estate in him; and therefore if A. in pursuance of a power limit an estate to B. to the use of C., the use to C. cannot be executed by the statute. But as the use, under an appointment, is served out of the original seisin of the feoffees or releases to uses, it is capable of the same modifications, as the use declared upon the original conveyance. Suppose a feoffment or lease and release made to J. S. and his heirs, to such uses as A. B. shall appoint, and in default of and until appointment, to certain uses therein declared. A. B. in pursuance of his power, appoints, that J. S. and his heirs shall stand seised to the uses following; viz. to the use of himself for life, remainder to trustees to preserve contingent remainders, remainder to his first and other sons in tail. The use in this case will be executed in A. B., and the trustees to preserve, &c. immediately; and in the sons, when they are born.

As to the ne-
cessity of recit-
ing the power.

(3.) When a person may dispose of an estate either under a power of appointment, or as the absolute owner of it, it is necessary,
if

if he wish to convey in pursuance of the appointment, that the power should be *recited* or *referred to* : but when a disposition cannot take effect but as an appointment or limitation of the use, then there is no absolute necessity that the appointer should notice the power, nor convey in pursuance of it^e. Thus if A. make a feoffment, levy a fine, suffer a recovery, or convey by lease and release to B. and his heirs to such uses, as A. shall by deed or will appoint, and in default of such appointment, to the use of A. in fee ; as A. in this case may appoint the land, or dispose of it as the legal proprietor, if he make his will, and without *referring to* or *reciting* the power, devise the land generally, the will must take effect as a devise of the land, and not as a disposition of the use^f. Lord Coke, indeed, makes a distinction between a feoffment to *such uses as the feoffor shall by his last will appoint*, and *to the use of the feoffor's last will* ; for with respect to the latter he says, that if the feoffor make his will *with reference* to the power, yet it shall

As to the necessity of reciting the power.

^e See 12 Mod. 469. Lawson, 3 Bro. 272.
 Andrews v. Emmot, 2 ^f Co. Litt. 111. b.
 Bro. 297. Lawson v. 112. a. 6 Co. 18. a.

As to the necessity of reciting the power.

take effect by virtue of the *devise*, and not as a limitation of the use ⁶.

Of the instrument executing the power.

(4.) The instrument, executing the appointment, must be accompanied with all the ceremonies required by the power; such as sealing, signing, and the attestation of witnesses. The deed itself, being merely the limitation of a use served out of a feisin transferred by another deed, cannot be considered as an independent conveyance. It is an instrument inapplicable to the transfer of property by a person conveying as the absolute proprietor. Yet an appointment may be, and frequently is, executed by a conveyance, which, if not expressly or impliedly referring to the power, would operate upon the legal estate. Thus if releasees to uses in pursuance, and by virtue, of a power of selling and exchanging, reserved to them, convey by *lease and release*; the conveyance shall operate as a disposition of the use: and in a case, where land was devised to B. for life, with a power to dispose of the fee to any of her children; it was determined, that a conveyance by lease and release by B. to

⁶ Har. Co. Litt. 112, a. n. 2. Moor, 280.

the use of herself during her life, with remainder to the use of her children, was an effectual execution of the power^h. Appointments, however, made in this manner, are always informal,

(5.) It is generally true, that a use limited by virtue of a power of appointment has relation to the conveyance, in which the power is containedⁱ. Therefore, if an estate be limited to the use of such persons as a purchaser shall appoint, and in default of appointment to the use of the purchaser and his heirs; until the purchaser exercise the power, he is seised of a base and qualified fee, liable to be defeated by the execution of it; and if he die without making any appointment, his wife will be clearly entitled to her dower; but if he exercise his power, then a new use springs up, which entirely defeats the intermediate use limited in default of the appointment, and of course destroys the wife's right to dower. So if an estate be conveyed to the use of A. for life, with many remainders over, and a power be reserved to A. to

Of the relation of the appointment to the original conveyance.

^h See *Tomlinson v. Dighton*, 1 P. W. 149.
ⁱ *Salk.* 239.

ⁱ See 1 *Atk.* 560. note 2.

make leases, or a jointure upon an after-taken wife; when A. exercises his power, it takes effect by way of limitation of a use, which entirely over-reaches and takes precedence of the other uses interfering with it^k.

Upon the same principle, if there be a limitation of a use to A. for life, and after his decease to such uses as B. shall appoint, who afterwards in A.'s lifetime appoints the use to the right heirs of A.; in this case it seems, that the limitation of the use to the right heirs of A. by virtue of the appointment unites with the life estate of A. so as to make the right heirs take by *descent*, and not by way of a contingent *remainder*^l. In cases like this, care should be taken to appoint the use immediately to the right heirs; therefore if B. make an appointment to C. in fee, to the use of the right heirs of A.; the legal estate or use is vested in C. by the appointment, and the right heirs of A. take only an *equitable* estate or *trust*. In this case the *legal* estate for life of A. cannot be incorporated with the *equitable* one limited to his

^k See 1 P. W. 246.

^l See Fearn, 99, 100. Ed. 4.

right heirs; and consequently the remainder to his right heirs is contingent.

In some cases, however, an appointment does not relate back in point of time to the instrument, by which it is created. Thus in the case of the Duke of Marlborough v. Lord Godolphin^m, where Lord Sunderland by his will gave the interest of £. 30,000 to his wife during her life, and after her decease the principal to be distributed among such of his children, and in such manner and proportion, as she by any deed, or will, or instrument or writing in nature of a will, should direct and appoint: She, by her will reciting the power, gave £. 15,000 to Lady Morpeth, and £. 2,000 to Mr. Spencer, who both died in the lifetime of the testatrix: the question was, whether the appointment had a relation back to the time of the death of Lord Sunderland, when the instrument, which created the power, took effect? for if it had, then the legacies given to Lady Morpeth and Mr. Spencer must be considered as having become vested in them during their lives. But Lord Hard-

^m 2 Ves. 61.

wicke said, that nothing vested in them during their lives, and consequently that nothing was transmissible to their representatives; because every person, claiming under the execution of a power, must claim not only according to the execution of the power, but according to the *nature* of the *instrument*, by which that power is executed; and therefore a *will*, in execution of such a power, being always *revocable*, it is not complete till the death of the testatrixⁿ.

Of appointments
to unborn chil-
dren.

(6.) By virtue of a power of appointment a person may, in a certain degree, effectuate a remote limitation, which, if placed in the original deed, would be considered as tending to a perpetuity, and therefore void. Thus if there be a limitation to B. for life, who at that time has no son, with a *general* power reserved to him to limit the uses in remainder to such persons, as he shall appoint; here upon the birth of a son of the tenant for life, the use may be limited to such first son *for life*, remainder to his first and other sons in strict settlement; notwithstanding the persons, to whom the estates

ⁿ See 1 Vesf. 139. 2 Vesf. 612. *Lisle v. Lisle*, 1 Bro. 533.

are

are appointed, were not in existence at the time of the execution of the conveyance, in which the power is contained. But when the Duke of Marlborough gave a power to trustees by his will, on the birth of the sons of the tenant for life, therein named, to revoke the uses limited to those sons *in tail*, and to limit the uses to such sons *for life*, remainder to the first and other sons of such sons severally and successively in tail male; it was holden, that this power, as it tended to a perpetuity, was void^o. It should seem, however, that if an estate be settled to the use of B. for life, with a power of appointing to his children, he may afterwards appoint an estate *for life* to a child unborn at the time of the creation of the power, though he cannot extend such appointment to the children of such child^p.

^o See 5 Bro. P. C. 592. 2 vol. Cases and Opinions,

^p See Mr. Booth's op. 439.

COVENANT

TO STAND SEISED TO USES,

Description of a
covenant to
stand seized.

(1.) USES may be raised either upon a pecuniary consideration, or upon what is called a *good* consideration, which is that of blood or marriage. Whatever be the form of the conveyance creating and transferring a use upon the former consideration, it is a *bargain and sale*, and must be inrolled as such; but conveyances, raising uses upon, or by virtue of, the latter, are termed, *covenants to stand seized*; and they are not within the words of the statute of inrollments, nor within the policy of it^a; because the consideration of blood and marriage is of a public nature.

What words necessary.

(2.) The consideration of this conveyance is the foundation of it. The words

^a See Plowd. 307.

covenants

covenant to stand seised are therefore not absolutely necessary to its operation. A conveyance in the form of, and void as a grant^b, feoffment^c, or release^d, may still take effect as a *covenant to stand seised*.

Description of a
covenant to
stand seised.

(3.) It may be deemed an invariable rule, that uses can only be raised upon a covenant to stand seised in consideration of blood or marriage^e. Thus affection for the heirs male of the covenantor, which he shall beget, brotherly love, and a desire that land should continue in the covenantor's name and blood, are all good to raise uses by way of covenant^f.

Consideration.

We are to observe, that if the consideration appear, though it be not particularly expressed, yet it is sufficient to raise a use upon this conveyance. Therefore if a man covenant to stand seised to the use of his wife, son, or cousin, without saying in con-

^b See 2 Vent. 150.

mer, 2 Will. 75.

^c See Doe v. Simpson, 2 Will. 22.

^e 2 Black. Com. 338.

Cart. 139. Moor 505.

^d Brown v. Jones, 1 Atk. 188. Roe v. Tran-

^f Plowd. 309. 2 Roll. ab. 785.

sideration of the natural love, which he bears towards them, the covenant will raise the use^z. So if a man, in consideration of natural love to his eldest son, covenant to stand seised to the use of such eldest son in tail, and afterwards to the use of his younger son, the consideration extends to the latter^h. If a man, in consideration of affection to a son or brother, covenant to stand seised to the use of such son or brother; and his wife, the covenant raises the use for the wifeⁱ; or if a man, in consideration that B. will marry his daughter, covenant to stand seised to the use of both, it is sufficient to carry the use to them accordingly^k.

But if a covenant be made to stand seised to the use of a person, related to the covenantor by blood or marriage, and of a stranger, the whole use will vest in the relation^l. Yet it is said, in Sheppard's Touchstone^m, that if I covenant with B. in con-

^z 7 Co. 40. in Redell's case, 2 Will. 22.

^h Ibid. 2 Roll. ab. 782. pl. 3.

ⁱ 2 Roll. ab. 784. pl.

3. 783. pl. 1.

^k Ibid. 784. pl. 2. 4.

^l Ibid. pl. 4.

^m Shep. T. 513.

consideration of the marriage of my son with his daughter, to stand seised to the use of R. (a stranger) for life, and after to the use of my son and his wife; in this case the use shall be executed in R. the stranger, because the remainder cannot be supported without a particular estate.

It seems, that if a man in consideration of money, and also of marriage, covenant to stand seised, the use will arise on the latter consideration only; and consequently if the marriage do not take effect, the use will never vest; though the money be actually paid^a. So a consideration consistent with the deed, or the considerations expressed in it, may be *averred*^b.

As to the considerations of friendship, long acquaintance, of being school fellows, affection to a natural son, and that the king is head of the commonwealth; they will not raise uses by way of covenant to stand seised^c.

^a Moer 102.

^b 7 Co. 40. a. 2 Roll.

ab. 790.

^c See Plowd. 302. 2

Roll. ab. 783. Co. Litt.

123. n. 8. 2 Co. 15. a. b.

It

Covenant to stand seised to Uses.

It is scarce necessary to notice, that if a man covenant to stand seised to the use of himself for life, with remainders over to his relations, and with a power for the tenant for life to make leases; this power is void, and cannot be exercised as the limitation of a use^p. So if a man should covenant to stand seised to the use of himself for life, with remainder to the use of trustees (who are not his relations) for the purpose of preserving contingent remainders, with remainder to his first and other sons in tail, &c.: no use would vest in the trustees; because the consideration does not extend to them. This is a principal reason why covenants to stand seised are fallen into disuse.

A vested estate
in the covenantor.

(4.) In order to render a covenant to stand seised effectual, the covenantor should have a vested estate in possession, reversion, or remainder. Therefore a covenant to stand seised of land, which the covenantor shall afterwards purchase, is void^q. It is said, that if a joint-tenant covenant to stand

^p 2 Roll. a. b. 260. 401. 2 Roll. ab. 79c. pl. 8.
Cro. Jac. 181.

^q Moor 342. Cro. El.

seised

seised of the moiety of his companion after his death, it is void; although the covenantor survive^r.

Description of a
covenant to
stand seised.

(5.) This conveyance, when made by a tenant in tail, cannot produce a discontinuance, and when made by a tenant for life, will not create a forfeiture; neither will it destroy contingent remainders depending upon such life estate.

The operation of
it.

^c 2 Roll. ab. 790. pl. 9.

F E O F F M E N T.

Feoffment with
general war-
ranty.

Feoffor.

Feoffee.

Attorney to de-
liver seisin.

THIS Indenture of three Parts, made this first day of February, in the year of our Lord Christ one thousand seven hundred and ninety-nine, and in the thirty-ninth year of the reign of our sovereign Lord George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. Between Andrew Akers of, &c. of the first part, Benjamin Brown of, &c. of the second part, and Charles Chivers of, &c. of the third part; *Witnesseth*, That in consideration of the sum of £. of lawful money of Great Britain to the said A. Akers in hand paid by the said Benj. Brown at or before the sealing and delivery of these presents, the receipt of which said sum of £. he the said A. Akers doth hereby acknowledge, and therefrom, and of and from the same, and every part thereof, doth acquit, release, and discharge the said B. Brown, his heirs, executors, administrators, and assigns, and every of them, for ever by these presents; He the said A. Akers Hath granted, aliened,

aliened, enfeoffed, and confirmed, and by these presents Doth grant, alien, enfeoff, and confirm unto the said Benjamin Brown, his heirs and assigns, All those pieces or parcels of land, &c. &c. And also all woods and underwoods, timber and other trees, mounds, hedges, ditches, fences, ways, paths, passages, water, water-courses, easements, paths, passages, advantages, and appurtenances to the said pieces or parcels of land, and hereditaments, or any of them, or any part thereof belonging or in anywise appertaining, or to or with the same, or any of them, or any part thereof, now or at any time heretofore usually held, occupied, or enjoyed, or accepted, deemed, taken, or known, as part, parcel, or member thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said Andrew Akers of, in, to, or out of the same, and every part thereof; **To Have and To Hold** the said pieces or parcels of land, hereditaments, and other the premises hereby granted and enfeoffed, or intended so to be, with the appurtenances, unto the said Benjamin Brown, his heirs and assigns, to the only use and behoof of the said Benjamin Brown, his heirs and assigns, for ever. And the said Andrew Akers, for himself, his heirs,

Common words.

Habendum.

General War-
ranty.

Letter of Attor-
ney.

executors, and administrators, Doth hereby covenant, promise, grant, and agree to and with the said Benjamin Brown, his heirs and assigns, That he the said Andrew Akers, and his heirs, all and every the said lands, hereditaments, and premises above granted and enfeoffed, or intended so to be, against him the said Andrew Akers, his heirs and assigns, and against all and every other person and persons whomsoever, shall and will warrant and for ever defend by these presents. And the said Andrew Akers hath nominated, constituted, and appointed, and by these presents Doth nominate, constitute, and appoint the said Charles Chivers his true and lawful attorney, for him and in his name and stead, to enter into, and take full, quiet, and peaceable possession and seisin of all and singular the above mentioned premises, or some part thereof in the name of the whole, and then to deliver full, quiet, and peaceable possession and seisin of all and singular the premises, or some part thereof, in the name of the whole, unto the said Benjamin Brown, or to his attorney in that behalf lawfully authorized, according to the form and effect, and true intent and meaning of these presents. In witness, &c.

Et

We it Remembered, That on this
day of in the year
first within written, full and peaceable
possession and seisin were had and
taken by the within named Charles
Chivers of the lands and heredita-
ments within mentioned to be
granted and enfeoffed, and were in
the name of the within mentioned
Andrew Akers delivered by the said
Charles Chivers to the within named
Benjamin Brown; To Hold the same
unto the said Benjamin Brown, his
heirs and assigns for ever, according
to the form and effect, and true intent
and meaning of the within written
Indenture, in presence of

GRANT.

See statute 17
Geo. 3. c. 26.

GRANT of a **RENT CHARGE** during the
Life of the Grantor, with a **DEMISE** to
a Trustee for Years for securing the
same.

THIS Indenture of three parts, made
the day of in the thirty-
ninth year of the reign of our sovereign
Lord George the Third, &c. And in the
year of our Lord Christ one thousand
seven hundred and ninety-nine, Between
Andrew Ashton of
in the county of Middlesex, Esquire, of
the first part, Benjamin Barton of

of the second part,

and Charles Cary of of
the third part; ~~Whereas~~ William Ashton,
late of

Recital of a will.

deceased, in and by his last will and testa-
ment in writing, duly executed and attested,
bearing date on or about the twenty-second
day of May, in the year one thousand seven
hundred and eighty-eight, Did (amongst
other

other things) give and devise all and every his freehold messuages, lands, tenements, and hereditaments, situate, lying, and being in the several parishes of
 , and elsewhere in the county of
 with the appurtenances to the said Andrew Ashton and his assigns during the term of his natural life, without impeachment of waste, with divers remainders over, as in the said will particularly mentioned; and the said testator thereby appointed Robert Richards, Esquire, sole executor of his said will, who on or about the twenty-second day of February one thousand seven hundred and eighty-nine duly proved the same in the prerogative court of Canterbury: **And whereas** the said Benjamin Barton hath contracted and agreed with the said Andrew Ashton for the absolute purchase of one clear annuity, or annual sum of £. ; to be paid during the life of the said Andrew Ashton by even and equal quarterly payments, and so in proportion for so many days of the last three months or quarter of a year, in which the said Andrew Ashton shall happen to die, as shall be elapsed at the time of his death, at or for the price or sum of £. : **And whereas** for secur-
 H 3 ing

The contract for
the purchase.

Bond for secur-
ing the annuity;

ing the payment of the said annuity or clear yearly sum of £. , the said Andrew Ashton by his bond or obligation in writing, bearing even date herewith, is become bound unto the said Benjamin Barton, his executors, administrators, and assigns, in the penal sum of £. , with a condition thereunder written for making void the same on payment to the said Benjamin Barton, his executors, administrators, and assigns, of the said annuity, or clear yearly sum of £. at the times, and in the manner in the said condition and hereinafter mentioned; And as a further security for the payment of the said annuity, or clear yearly sum of £. , the said Andrew

and warrant of
attorney.

Ashton hath also by a certain warrant of attorney, bearing even date with the said bond and these presents, authorized

and

gentlemen, two attornies of his majesty's court of at Westminster, to confess judgment against him in the said court of

in an action of debt for the said sum of £. and costs of suit:

And whereas it was agreed, upon the treaty for the purchase of the said annuity, that for the

the further, better, and more effectually securing unto the said Benjamin Barton, his executors, administrators, and assigns, the true, punctual, and regular payment of the said annuity or clear yearly sum of £.

the same should be charged upon, and be issuing and payable out of all those the said devised messuages, lands, tenements, and hereditaments, late of the said testator William Ashton, situate, lying, and being in the said county of

and so devised by his said will as aforesaid, with their and every of their rights, members, and appurtenances; and that the same estates and premises should be demised to a trustee for a term of years, upon the trusts and in the manner hereinafter expressed and declared of and concerning the same. *Now this Indenture Witnesseth,*

The grant.

That in pursuance of the said recited agreement, and for and in consideration of the sum of £.

of lawful money of Great Britain to the said Andrew Ashton in hand well and truly paid by the said Benjamin Barton at or before the sealing and delivery of these presents (being the same sum of £.

which is mentioned in the condition of the said recited bond), the receipt^a and payment

^a See note A.

of which said sum of £. he the said Andrew Ashton doth hereby acknowledge, and from the same and every part thereof doth acquit, release, and discharge the said Benjamin Barton, his executors, administrators, and assigns, and every of them, for ever by these presents, He the said Andrew Ashton Hath given, granted, and confirmed, and by these presents Doth give, grant, and confirm unto the said Benjamin Barton, his executors, administrators^b, and assigns, for and during the natural life of him the said Andrew Ashton, one annuity, clear yearly rent, or annual sum of £. of lawful money of Great Britain, to be yearly issuing, payable, going, had, received, and taken by him the said Benjamin Barton, his executors, administrators, and assigns, out of, and to be charged and chargeable upon all those the said freehold messuages, lands, tenements, and hereditaments, late of the said testator William Ashton, situate, lying, and being in the several parishes of and and each and every of them, and elsewhere in the said county of with their and every of their rights, members, and appurtenances, and out of all other the messuages, lands, tenements, and heredita-

^b See note B.

ments,



ments, in the county of by the
 said will devised as aforesaid, or whereof or
 whereto he the said Andrew Ashton is under
 and by virtue of the said in part recited will,
 or otherwise, seised, possessed, or entitled
 for any estate or interest whatsoever; to-
 gether with all and singular the rights, mem-
 bers, and appurtenances thereto belonging,
 or in anywise appertaining, and the remain-
 der and remainders, yearly and other rents,
 issues, and profits of all and singular the pre-
 mises: **To have, hold, receive, perceive,**
take, and enjoy the said annuity, clear
 yearly rent, or annual sum of £. and
 every part thereof, unto the said Benjamin
 Barton, his executors, administrators, and as-
 signs, for and during the natural life of the
 said Andrew Ashton, to be paid and payable
 to him the said Benjamin Barton, his execu-
 tors, administrators, or assigns, at or in the
 common dining-hall in Lincoln's Inn, in the
 said county of Middlesex, by four equal quar-
 terly payments, between the hours of ten and
 twelve of the clock in the forenoon of the
 several and respective days following (that is
 to say)

Habendum.

Days of pay-
ment.

in each and every year, by even
 and equal portions, without making any de-
 duction,

duction, defalcation, or abatement, out of the same, or any part thereof, for or in respect of any taxes, charges, assessments, payments, or other matter, cause, or thing whatsoever, taxed, charged, assessed, or imposed, or to be taxed, charged, assessed, or imposed upon the said messuages or tenements, lands, hereditaments, and premises charged with the payment of the said annuity, or yearly rent of £.

or any of them, or any part thereof, or on the said Benjamin Barton, his executors, administrators, or assigns, in respect thereof, by authority of parliament, or otherwise howsoever; together with a proportionable part of the said annuity, or clear yearly sum of £.

for the time, which shall elapse between the last of the said days of payment next preceding the decease of the said Andrew Ashton and the day or time of such his decease; the first payment of the said annuity to begin and be made on the day of next ensuing the date hereof.

Power to dis-
train.

Provided always, and it is hereby declared and agreed by and between the said parties hereto, and particularly the said Andrew Ashton, for himself, his heirs, executors, and administrators, doth hereby grant, covenant, and agree to and with the said Benjamin Barton,

Barton, his executors, administrators, and assigns, that in case the said annuity, yearly rent, or annual sum of £. or any part thereof, shall happen to be behind and unpaid by the space of fourteen days next over or after any of the said days or times hereby appointed for the payment thereof, and whereon the same ought to be paid as aforesaid, then and in every such case, and so often as it shall so happen, it shall and may be lawful to and for the said Benjamin Barton, his executors, administrators, and assigns, into and upon the said messuages, tenements, lands, hereditaments, and premises so charged with the payment of the said annuity, yearly rent, or annual sum of £. or intended so to be as aforesaid, or into and upon any part thereof, to enter and distrain for the same annuity, yearly rent, or annual sum of £. and all arrears thereof; and the distress and distresses then and there found and taken to take, lead, drive, carry away, and impound, and the same in pound to detain and keep, until the same annuity, or yearly rent or sum of £. and all arrears thereof, and all costs, charges, and expences whatsoever sustained, or occasioned by, or attending the making, taking, and keeping any

any such distress, shall be fully paid and satisfied; and in default of payment thereof in due time after any such distress or distresses shall be made and taken, to appraise, sell, or dispose of such distress or distresses, or any part thereof, or otherwise to act therein according to the due course of law in like manner, as in cases of distress taken for non-payment of rents reserved upon common leases; To the intent, that thereby and therewith the said Benjamin Barton, his executors, administrators, and assigns, shall and may be fully paid and satisfied the said annuity, yearly rent, or annual sum of £.

and all arrears thereof, or so much thereof, as shall then be remaining due and unpaid, and all costs, charges, and expences whatsoever sustained or occasioned by the non-payment thereof. **Provided** also, and he

Power of entry.

the said Andrew Ashton, for himself, his heirs, executors, and administrators, doth hereby further covenant, grant, and agree to and with the said Benjamin Barton, his executors, administrators, and assigns, that in case the said annuity, yearly rent, or sum of £.

or any part thereof, shall at any time during the natural life of the said Andrew

Ashton

Ashton happen to be behind and unpaid by the space of twenty-eight days next over, or after, any of the said days or times appointed for the payment thereof as aforesaid, then and in such case, and so often as it shall happen (although no formal or lawful demand shall be made) it shall and may be lawful for the said Benjamin Barton, his executors, administrators, and assigns, into and upon all the said messuages, or tenements, lands, hereditaments, and premises hereby charged therewith as aforesaid, or into and upon any part thereof in the name of the whole, to enter, and the same to have, hold, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take to and for his and their own use and benefit, until he or they shall be thereby, or therewith, or otherwise, fully paid and satisfied the said annuity, or yearly rent, or sum of £. and all arrears thereof, and also so much of the said annuity or clear yearly rent or sum of £. as shall incur and grow due during such time as the said Benjamin Barton, his executors, administrators, or assigns, shall continue in possession of the said hereditaments and premises after such entry as aforesaid, and also all such loss, costs,

Covenant to pay
the annuity.

costs, charges, damages, and expences whatsoever, as shall be sustained or occasioned by reason, or means of the non-payment of the said annuity, or yearly rent charge, or any part thereof, at or on the days and times hereinbefore expressed, and appointed for the payment thereof^c (such possession, when taken, to be without impeachment of waste); and the said Andrew Ashton, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Benjamin Barton, his executors, administrators, and assigns, that he the said Andrew Ashton, his heirs, executors, or administrator, shall and will well and truly pay, or cause to be paid, unto the said Benjamin Barton, his executors, administrators, or assigns, for and during the natural life of him the said Andrew Ashton, the said annuity, yearly rent, or annual sum of £. free and clear of and from all taxes, charges, rates, and other deductions whatsoever, parliamentary or otherwise, at the place, days, and times, and in manner and form hereinbefore expressed, limited, and appointed for the payment thereof^d, together with a pro-

^c See note C.

^d See note D.

portionable

portionable part of the same annuity, or yearly sum of £. for the time, which

shall elapse between the last of the said quarterly days of payment next preceding the decease of him the said Andrew Ashton and the day or time of such his decease^e. And

Demise to a trustee.

this Indenture further Witnesseth, that in pursuance of the said agreement, and for the consideration hereinbefore expressed, and for the further, better, and more effectually securing the payment of the said annuity, or yearly sum of £.

, at or on the days and times and in the manner aforesaid, and also in consideration of the sum of ten shillings of lawful money of Great Britain to the said Andrew Ashton in hand paid by the said Charles Cary, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), he the said Andrew Ashton, at the request, and by the direction and appointment of the said Benjamin Barton (testified by his being a party to, and sealing and delivering these presents), hath granted, bargained, sold, and demised, and by these presents doth grant, bargain, sell, and demise unto the said Charles

^e See note E.

Cary,

Cary, his executors, administrators, and assigns, all those the said several messuages, or tenements, lands, hereditaments, and premises, with the appurtenances hereinbefore particularly mentioned, and hereinbefore charged with the payment of the said annuity or yearly rent of £. and all other the estates and hereditaments situate and being in the said county of , which he the said Andrew Ashton is under and by virtue of the said hereinbefore in part recited will or otherwise seised, or possessed of, or intitled to, for any estate of inheritance, or for his life, or for any term or number of years, or otherwise howsoever; together with all and singular the rights, members, and appurtenances thereto respectively belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits of all and singular the said several hereditaments and premises; To have and to hold the said messuages, or tenements, lands, hereditaments, and premises hereby granted and demised, or intended so to be, with the appurtenances, unto the said Charles Cary, his executors, administrators, and assigns, from the day next before the day of the date of these presents for

2

and

Habendum for
99 years.

and during the term of ninety-nine years thence next ensuing, and fully to be complete and ended, without impeachment of waste; yielding and paying therefore yearly and every year, during the continuance of this demise, unto him the said Andrew Ashton the rent of one pepper corn (if the same shall be lawfully demanded), upon the trusts nevertheless, and to and for the ends, intents, and purposes hereinafter expressed and declared of and concerning the same hereby demised premises (that is to say): Upon trust in the first place to permit and suffer the said Andrew Ashton and his assigns to receive and take the yearly income, or the rents, issues, and profits of all the said hereby demised premises, with the appurtenances, until default shall happen to be made of or in payment of the said annuity, yearly rent, or annual sum of £. or some part thereof, at or on the days and times, and in the place and manner hereinbefore limited and appointed for payment thereof; and upon this further trust, that in case the said annuity, yearly rent, or annual sum of £. or any part thereof, shall happen to be behind or unpaid by the space of thirty days next over or after any of the

Upon trust.

saïd days or times hereinbefore limited and appointed for payment of the same, and whereon the same ought to be paid as afore-saïd (being lawfully demanded), then and so often the saïd Charles Cary, his executors, administrators, or assigns, shall and do, from time to time, by and out of the rents, issues, and profits of the saïd messuages or tenements, hereditaments and premises, or any part thereof, or by demising, leasing, mortgaging, or selling the same, or any part thereof, for all or any part of the saïd term of ninety-nine years therein, or by such other ways or means, as to him the saïd Charles Cary, his executors, administrators, or assigns, shall seem meet, raise and levy such sum and sums of money, as shall be sufficient to pay and satisfy the saïd annuity, yearly rent, or annual sum of £. or so much thereof, as shall from time to time happen to be in arrear and unpaid; together with all such loss, cost, charges, damages, and expences whatsoever, as the saïd Charles Cary and Benjamin Barton, or either of them, their or either of their executors, administrators, or assigns, shall sustain, expend, or be put unto, for or by reason or means of the non-payment of the same annuity or yearly

yearly sum of £. or any part thereof,
 at the days and times, and in the manner
 hereinbefore appointed for payment thereof,
 and as the said Charles Cary, his executors,
 administrators, and assigns shall sustain or
 be put unto in and about the execu-
 tion and performance of the trust hereby
 declared; and shall and do pay and apply
 the monies arising thereby, or therefrom, in
 payment and satisfaction thereof accordingly;
 and shall and do pay to, or otherwise permit
 and suffer the said Andrew Ashton and his
 assigns to have, receive, and take the residue
 and overplus of the said rents, issues, and
 profits of the said messuages, or tenements,
 lands, hereditaments, and premises, after full
 payment and satisfaction of the said annuity
 or yearly sum of £. and all arrears there-
 of, and all such costs, charges, damages, and
 expences as aforesaid, to and for his and their
 own use and benefit: Provided always, and
 it is hereby agreed and declared, that after
 the decease of the said Andrew Ashton, and
 full payment of the said annuity or yearly
 sum of £. and all arrears thereof to
 the said Benjamin Barton, his executors, ad-
 ministrators, and assigns, and all such costs,
 charges, damages, and expences, as afore-
 said, the said term of ninety-nine years here-

Cesser of the
 term.

The grantor covenants, that he has good right to charge the premises;

and to demise;

by granted and demised of and in the premises, or so much thereof as shall not be disposed of under the trusts aforesaid, shall cease, determine, and be absolutely void.

And the said Andrew Ashton, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said Benjamin Barton, his executors, administrators, and assigns, by these presents, in manner and form following (that is to say); that he the said Andrew Ashton hath in himself good right, full power, and lawful and absolute authority to charge the said messuages, or tenements, lands, hereditaments, and premises, and every part or parcel thereof, with the payment of the said annuity, or yearly rent or sum of £. in

manner aforesaid; and to demise the same messuages, or tenements, lands, hereditaments, and premises respectively to the said Charles Cary, his executors, administrators, and assigns for and during the said term of ninety-nine years^c, upon the trusts, and for the intents and purposes hereinbefore mentioned, expressed, and declared of and con-

^c See, as to an action upon a covenant of this kind, Bradshaw's case, 9

Co. 60. b. Cro. Jac. 304.

cerning the same, and according to the true intent and meaning of these presents; and further, that all and singular the premises hereby demised now are and shall from time to time, and at all times hereafter, during the continuance of the said term of ninety-nine years, remain, continue, and be open to, and sufficient for, such distress and entries of the said Benjamin Barton, his executors, administrators, and assigns, in case of non-payment to him or them of the said annuity, or yearly rent, or sum of £. at the days or times, and in manner aforesaid; and that the said messuages, or tenements, lands, hereditaments, and premises, now are free and clear, and freely and clearly acquitted, exonerated, and discharged, and shall remain, continue, and be, during the said term hereby granted, well and sufficiently saved, defended, kept harmless, and indemnified by the said Andrew Ashton, his heirs, executors, and administrators, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, annuities, rents, dowers, right and title of dower, uses, trusts, wills, intails, recognizances, judgments, extents, executions, forfeitures, and of, from, and against all and singular

that the premises
are and shall con-
tinue free from
incumbrances;

and for further
assurance.

lar other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, executed, occasioned, or suffered, or to be had, made, done, committed, occasioned, or suffered by the said Andrew Ashton, or any other person or persons whomsoever^d: And moreover, that he the said Andrew Ashton, and all and every other person or persons whomsoever, having; or lawfully or equitably claiming, or who shall or may have, or lawfully or equitably claim any estate, right, title, trust, or interest whatsoever, of, in, to, or out of the said messuages or tenements, lands, hereditaments, and premises hereinbefore mentioned and hereby demised, or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him or them, shall and will, from time to time, and at all times^e during the life of him the said Andrew Ashton, upon every reasonable request^f of the said Benjamin Barton, his executors, administrators, or assigns, but at the proper costs and charges^g in the law of the said Andrew Ashton, make, do, acknowledge, levy, suffer, and execute, or cause or

^d See note F.

^e See 1 Roll. ab.
441.

^f Ibid, 441. Styles,
242. T. Jones, 195.

^g See note G.

procure

procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts, deeds, and things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely granting and securing the said annuity or yearly rent-charge of £. to the said Benjamin Barton, his executors, administrators, and assigns, by and out of the premises, and every part thereof, for and during the continuance of the natural life of him the said Andrew Ashton, and also for the more effectually granting, demising, and assuring the same premises unto the said Charles Cary, his executors, administrators, and assigns, for and during all the then remainder of the said term of ninety-nine years, upon the trusts hereinbefore declared thereof, as by the said Benjamin Barton, his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised and required. **And** Recital of an agreement to enter up judgment, pursuant to the warrant, of attorney.
whereas the judgment so to be confessed by the said in his Majesty's court of for the said sum of £. and costs of suit as aforesaid,
 It is agreed shall be entered of record in the

Declaration that,
the judgment is
intended to be
a collateral se-
curity for pay-
ment of the
annuity.

saïd court of as of
term now last past, or of some other
subsequent term. **Now this Indenture**
further Witnesseth, and it is hereby agreed
and declared between and by the saïd Andrew
Ashton and Benjamin Barton, that the saïd
judgment is intended to be so entered up as
aforesaid, and the saïd Benjamin Barton, his
executors, administrators, and assigns, shall
stand and be possessed thereof, and of all be-
nefit and advantage arising, and to be had and
taken thereby, as a collateral security only,
and for the better and more effectually secur-
ing the payment of the saïd annuity or yearly
sum of £. to the saïd Benjamin Barton,
his executors, administrators, and assigns,
during the life of the saïd Andrew Ashton,
at the several days and times, and in the
manner hereinbefore limited and appointed
for payment thereof; and that no execution
or executions shall be issued or taken out
upon the saïd judgment, unless and until
some payment of the saïd annuity, or some
part thereof, shall be in arrear for the space
of twenty-one days next after some or one
of the saïd days hereinbefore limited and
appointed for payment thereof as aforesaid:
Provided always, and it is hereby further
agreed and declared between and by the saïd
parties

parties to these presents, that when and so often as the said annuity or yearly rent-charge of £. or some part thereof, shall be behind and unpaid by the space of twenty-one days next over or after any of the said days of payment hereinbefore mentioned, then and in such case, and so often as it shall so happen, it shall and may be lawful to and for the said Benjamin Barton, his executors, administrators, or assigns to sue out such execution or executions upon or by virtue of the said judgment, as he or they shall think fit, or be advised, for the recovery of the said arrears of the said annuity or yearly rent-charge of £. and all costs and charges, which he the said Benjamin Barton, his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason, or means of the non-payment of the same, or any part thereof; and that it shall not be necessary for the said Benjamin Barton, his executors, administrators, or assigns, to revive, or cause the said judgment to be revived, or to do any act, matter, or thing to keep the same on foot, notwithstanding the same judgment shall have been entered of record for the space of one year, or upwards; and notwithstanding any rule

or practice of the said court, in which the said judgment shall be entered on record, to the contrary ; and that he the said Andrew Ashton, his heirs, executors, or administrators, shall not nor will have, take, or receive, or attempt by any ways or means to have, take, or receive any advantage for want of reviving or keeping the said judgment on foot: Nevertheless it is hereby agreed and declared, that after the decease of the said Andrew Ashton, and full payment of the said annuity or yearly rent-charge of £. and all arrears thereof, up to the day of the decease of him the said Andrew Ashton, and of all such costs, charges, damages, and expences as aforesaid, the said Benjamin Barton, his executors, administrators, or assigns, shall and will, at the request, costs, and charges of the heirs, executors, or administrators of the said Andrew Ashton, acknowledge satisfaction of the said judgment on the record thereof in due form of law, or do any further or other reasonable act, matter, or thing that may be then required in regard thereto ; so as for the doing thereof he the said Benjamin Barton, his executors, administrators, or assigns, be not compelled nor compellable to travel from his, her, or their place or places of abode. And
whereas

Whereas upon the treaty for the purchase of the said annuity or clear yearly rent-charge of £. hereinbefore granted and secured, or

Recital of an agreement for the re-purchase of the annuity.

intended so to be, it was agreed and declared between and by the said Andrew Ashton and Benjamin Barton, that he the said Andrew Ashton should, at any time thereafter, be at liberty to re-purchase and buy up the said annuity or clear yearly rent of £.

upon giving unto the said Benjamin Barton, his executors, administrators, or assigns, ten days notice in writing of such his, her, or their intention, and upon paying unto the said Benjamin Barton, his executors, administrators, or assigns, at the end of the said ten days, for which such notice shall be given as aforesaid, the full sum of £. of lawful money of

Great Britain, as and for the consideration of such re-purchase of the said annuity, together with all arrears, that shall be due on the said annuity unto and until the day of re-purchasing the same. **Now therefore this Indenture further Witnesseth,** and the said Benjamin Barton, for himself, his heirs, executors, and administrators, doth hereby accordingly covenant, promise, and agree to and with the said Andrew Ashton, that in case the said Andrew Ashton shall at any time hereafter

be

be minded or desirous of re-purchasing or buying up the said annuity or clear yearly rent-charge of £. , and of such his intention shall give unto the said Benjamin Barton, his executors, administrators, or assigns, ten days notice in writing, he the said Benjamin Barton, his executors, administrators, or assigns, shall and will at the end of the said ten days, for which such notice shall be given as aforesaid, on receiving of and from the said Andrew Ashton all sum and sums of money whatsoever, which shall be then due for, or on account of, the arrears of the said annuity up to the day of re-purchasing the same as aforesaid, accept, receive, and take the sum of £. as and in full for the re-purchase of the said annuity or clear yearly sum of £. hereinbefore granted as aforesaid; and upon receipt of all arrears of the said annuity, and of the said sum of £. he the said Benjamin Barton, his executors, administrators, or assigns, and also the said Charles Cary, his executors, administrators, or assigns, shall and will, at the request, and proper costs and charges in the law, of the said Andrew Ashton, release or assign the said annuity or clear yearly rent-charge of £. and the several securities given for
for

for the same, unto the said Andrew Ashton, or unto such other person or persons as he shall in that behalf nominate, direct, or appoint; or otherwise shall and will deliver these presents, and the aforesaid bond to the said Andrew Ashton to be cancelled, and acknowledge, or cause satisfaction to be acknowledged on the record of the said judgment, that shall be entered up by virtue of the said recited warrant of attorney, and do every other act, deed, or thing necessary or adviseable for the releasing, assigning, vacating, and discharging as well the said annuity or yearly rent-charge of £. as the said several securities given and executed for the payment thereof, as by the said Andrew Ashton, his executors, administrators, or assigns, or his or their counsel in the law, shall in that behalf be reasonably advised, devised, and required, so as for the doing thereof he the said Benjamin Barton, his executors, administrators, or assigns, or the said Charles Cary, his executors, administrators, or assigns, be not compelled or compellable to go or travel from his, her, or their then usual place or places of abode^b. In witness, &c.

^b See note H.

BARGAIN and SALE.

To make a Tenant to the Præcipe for suffering a Recovery.

Recoveree.

Tenant.

Demandant.

THIS Indenture of three parts made the twelfth day of February, in the thirty-ninth year of the reign of our sovereign Lord George the third, &c. and in the year of our Lord Christ one thousand seven hundred and ninety-nine, Between Daniel Den, of Lincoln's Inn, in the county of Middlesex, Esquire, (eldest son and heir at law of Daniel Den, late of &c. Esquire, deceased) of the first part, Edward East, of &c. Esquire, of the second part, and Francis Foley, of &c. Gentleman, of the third part, *Witnesseth*, That for docking, barring, and extinguishing all estates tail, and reversions and remainders thereupon expectant or depending of and in the messuages, lands, tenements, and hereditaments hereinafter bargained and sold, or intended so to be, and for limiting

limiting and assuring the same, with the appurtenances, to the use of the said Daniel Den (party hereto) his heirs and assigns, for ever; and for and in consideration of the sum of five shillings of lawful money of Great Britain to the said Daniel Den (party hereto) in hand paid by the said Edward East, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), he the said Daniel Den (party hereto) hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Edward East, his heirs and assigns, all those messuages, &c. &c. together with all and singular edifices, buildings, barns, stables, orchards, gardens, yards, backfides, commons, timber, and timber trees, woods, and underwoods, and the ground and soil thereof, ways, paths, passages, waters, water-courses, profits, commodities, advantages, hereditaments and appurtenances whatsoever to the same messuages, lands, tenements, and hereditaments belonging, or in anywise appertaining, or to or with the same, or any of them, or any part thereof, now or at any time heretofore used, occupied, or enjoyed, or accepted, reputed, deemed,

ed, taken, or known as part or parcel thereof, or of any of them, or as appendant or appurtenant thereto; and the reversion and reversions, remainder and remainders, and the rents, issues, and profits thereof, and every of them, and every part thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of him the said Daniel Den (party hereto) of, in, and to the said messuages, lands, tenements, and hereditaments hereby bargained and sold, or intended so to be, and every of them, and every part thereof: To Have and To Hold the said messuages, lands, tenements, hereditaments, and other the premises hereby bargained and sold, or intended so to be, with their and every of their appurtenances, unto the said Edward East, his heirs and assigns for ever, to the use of the said Edward East, his heirs and assigns for ever; to the intent and purpose, that he the said Edward East may become a perfect tenant of the immediate freehold of the messuages, tenements, lands, hereditaments, and premises hereby bargained and sold, or intended so to be; to the end, that one or more good and perfect

Habendum.

fect common recovery or recoveries may be thereof had and suffered in manner herein-after mentioned; for which purpose it is hereby agreed and declared between and by the said parties hereto, that it shall and may be lawful for the said Francis Foley, at the costs and charges of the said Daniel Den (party hereto), in or as of Easter term now next ensuing, or some other subsequent term, to sue forth and prosecute out of his Majesty's high court of chancery one or more writ or writs of entry, *sur disseisin en le poſt*, returnable and to be returned before his Majesty's justices of the court of common pleas at Westminster, thereby demanding, by apt and convenient names, qualities, numbers of acres, and other descriptions, the said messuages, lands, tenements, hereditaments, and premises, with the appurtenances, against the said Edward East; to which said writ or writs of entry the said Edward East shall appear gratis, either in his own person, or by his attorney in that behalf lawfully authorized, and vouch over to warranty the said Daniel Den (party hereto), who shall also appear gratis, either in his own proper person, or by his attorney in that behalf lawfully authorized, and enter into the war-

ranty, and vouch over the common vouchee of the same court, who shall also appear gratis, and imparl, and after imparlance make default, so as that judgment may be thereupon had and given for the said Francis Foley to recover the said messuages, lands, tenements, hereditaments, and premises, hereby bargained and sold, or intended so to be, against the said Edward East, and for the said Edward East to recover in value against the said Daniel Den (party hereto), and for the said Daniel Den (party hereto) to recover in value against the common vouchee; and that execution shall and may be thereupon had and awarded accordingly, and all and every other act and thing done and executed needful and requisite for suffering and perfecting such common recovery or recoveries with vouchers as aforesaid: And it is hereby agreed and declared between and by the said parties to these presents, that from and immediately after suffering and perfecting the said common recovery or recoveries, so as aforesaid, or in any other manner to be suffered, the said common recovery or recoveries, and all and every other common recovery or recoveries, fines, conveyances, and assurances in the law
whatsoever

whatsoever heretofore had, made, levied, suffered, or executed, or hereafter to be had, made, levied, suffered, or executed, of the aforesaid messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof, by or between the said parties to these presents, or any of them, or whereunto they or any of them are or shall be parties or privies, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended, to be and enure, and the recoveror or recoverors in the said recovery or recoveries named or to be named, and his and their heirs, shall stand and be seised of the said messuages, lands, tenements, hereditaments, and premises, and every of them, and every part thereof, *to and for the only use and behoof* of the said Daniel Den (party hereto) his heirs and assigns, for ever; and to and for no other use, intent, or purpose whatsoever. In witness, &c.

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Gentleman, and John James of the same place, Linen Draper, of the other part; ~~Witnesseth~~, That the said George Gros, in consideration of five shillings of lawful money of Great Britain to him in hand paid by the said Henry Howard and John James, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), and for other good causes and valuable considerations the said George Gros hereunto moving, Hath bargained and sold, and by these presents Doth bargain and sell unto the said Henry Howard and John James, their executors, administrators, and assigns, all those messuages or tenements,

lands and hereditaments, &c. &c. together with all and singular the houses, outhouses, edifices, buildings, barns, dove-houses, stables, yards, gardens, orchards, lights, easements, ways, waters, watercourses, commons, commodities, privileges, emoluments, advantages, hereditaments, and appurtenances whatsoever to the said messuages or tenements, lands and hereditaments, belonging or in any wise appertaining, or accepted, reputed, taken, or known as part, parcel, or member thereof, or belonging to the same, or any part thereof; and the reversion and reversions, remainder and remainders, rents, issues, and profits of the premises, and of every part thereof: To Have and To Hold the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore bargained and sold, or intended so to be, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, unto the said Henry Howard and John James, their executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and unto the full end and term of one whole year thence next ensuing, and fully to be complete and ended;

yielding and paying therefore the yearly rent of one peppercorn at the expiration of the said term, if the same shall be lawfully demanded; to the intent and purpose, that, by virtue of these presents, and of the statute for transferring uses into possession, the said Henry Howard and John James may be in the actual possession of the same premises, and may thereby be enabled to accept and take a grant and release of the freehold, reversion, and inheritance of the same premises, and of every part and parcel thereof, to the said Henry Howard and John James, their heirs and assigns, to the uses, and for the intents and purposes to be declared by another indenture of three parts, already prepared, and intended to be dated the day next after the day of the date hereof. In witness, &c.

The RELEASE in FEE,

To a Purchaser and his Trustee to prevent
Dower.

THIS Indenture of three parts, made
the day of (to be dated
the day after the date of the bargain and
sale for a year), &c. &c. Between George
Gros of in the county of
Middlesex, Esquire, of the first part, Henry
Howard of in the afore-
said county, Gentleman, of the second part,
and John James of the same place, Linen
Draper (a trustee nominated by and on the
behalf of the said Henry Howard) of the
third part: ~~Whereas~~ the said Henry The contract.
Howard hath contracted and agreed with
the said George Gros for the absolute pur-
chase of the messuages or tenements, lands
and hereditaments hereinafter granted and
released, or intended so to be, and the fee
simple and inheritance thereof, with the
appurtenances, free from incumbrances,
at or for the price or sum of three
K 4 thousand

The release.

The considera-
tion.

thousand pounds: Now this Indenture Witnesseth, That in pursuance of the said agreement, and in consideration of the sum of three thousand pounds of lawful money of Great Britain to the said George Gros in hand well and truly paid by the said Henry Howard, at or before the sealing and delivery of these presents, the payment and receipt of which said sum of three thousand pounds (being in full for the absolute purchase of the messuages or tenements, and hereditaments hereinafter granted and released, or intended so to be) he the said George Gros doth hereby acknowledge; and from the same, and of and from every part thereof, doth acquit, release, and discharge the said Henry Howard, his heirs, executors, administrators, and assigns, and every of them for ever by these presents; and also for and in consideration of five shillings of like lawful money, at the same time to the said George Gros in hand paid by the said John James (the receipt whereof is hereby acknowledged), he the said George Gros, at the request and by the direction and appointment of the said Henry Howard (testified by his being a party to, and sealing and delivering these presents),

resents), Hath granted, bargained, sold, aliened, released, and confirmed, and by these presents Doth grant, bargain, sell, alien, release, and confirm unto the said Henry Howard and John James (in their actual possession now being by virtue of a bargain and sale to them thereof made by the said George Gros, in consideration of five shillings to him paid by the said Henry Howard and John James, in and by one indenture, bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession) and to their heirs and assigns, all those the messuages, lands, &c. &c. together with all outhouses, edifices, buildings, barns, dove-houses, stables, yards, gardens, orchards, lights, easements, ways, waters, watercourses, commons, commodities, privileges, emoluments, advantages, hereditaments, and appurtenances whatsoever to the said messuages or tenements, lands and hereditaments, belonging or in anywise appertaining, or accepted, reputed, taken,

Reference to the bargain and sale for a year.

Parcels.

Common words.

taken, or known as part, parcel, or member thereof; and the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the premises; and also all the estate, right, title, interest, use, trust, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, of him the said George Gros of, in, to, or out of the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and every of them, and every part and parcel thereof; together with true and attested copies of all deeds, evidences, and writings comprised or mentioned in the schedule hereunder written; the first of such copies to be made, written, and delivered by and at the costs and charges of the said George Gros; but the second and all future copies thereof to be made, written, or taken at the reasonable request, costs, and charges of the said Henry Howard, his heirs, or assigns; To Have and To Hold the said messuages or tenements, lands, hereditaments, and other the premises hereby granted and released, or intended so to be, with the appurtenances, unto the said Henry Howard

Copies of title
deeds.

Habendum.

Howard and John James, their heirs and assigns for ever^a, but to the uses, and to and for the intents and purposes, and upon the trusts hereinafter expressed and declared of and concerning the same; (that is to say) To the use of such person or persons, for such estate or estates, interest or interests, and to and for such intents and purposes, and in such manner and form, as he the said Henry Howard by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, or any writing in the nature of, or purporting to be, his last will and testament, or any codicil thereto, to be signed, sealed, and published by him in the presence of, and attested by, three or more credible witnesses, shall direct, limit, or appoint; and in default of, and until such direction, limitation, or appointment, or in case any such shall be made, then subject thereto, and when and as the estate or estates, interest or interests thereby limited or appointed, shall respectively end and determine, and in the

To the use of
the purchaser's
appointees.

^a See note I.

mean

mean time subject thereto, and as to such part or parts of the premises of which no complete direction or appointment shall be made, to the use of the said Henry Howard and his assigns during his life, without impeachment of waste, and from and after the determination of that estate by any means in his lifetime, to the use of the said John James and his heirs, during the life of the said Henry Howard, in trust nevertheless for the said Henry Howard and his assigns; and from and after the determination of the estate so limited in use to the said John James and his heirs, during the life of the said Henry Howard, to the only use and behoof of the said Henry Howard, his heirs and assigns for ever; and to, for, and upon no other use, trust, intent, or purpose whatsoever^b. And the said George Gros, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Henry Howard and John James, their heirs and assigns, and to and with each and every of them, in manner following (that is to say); That (for and notwithstanding any act, deed, matter,

Covenants for
the title.

^b See note K.

or thing whatsoever, made, done, executed, committed, occasioned, or suffered by him the said George Gros, or any of his ancestors, to the contrary) he the said George Gros is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of, or well and sufficiently entitled to, the messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, with the appurtenances, of and in : a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance in fee simple, without any manner of condition, contingent provisoe, power of revocation, or limitation of any new or other use or uses, or any other matter, restraint, cause, or thing whatsoever, to alter, change, charge, revoke, make void, lessen, encumber, or determine the same : And that (for and notwithstanding any such act, matter, or thing as afore said) he the said George Gros hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, alien, release, convey, and assure the messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended

tended so to be, and every part thereof, with the appurtenances, unto the said Henry Howard and John James, their heirs and assigns, to the uses, and to and for the intents and purposes, and upon the trusts hereinbefore expressed and declared of and concerning the same, according to the true intent and meaning of these presents: And also that the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and every part thereof, with the appurtenances, shall from time to time, and at all times hereafter remain, continue, and be to the uses, and to and for the intents and purposes, and upon the trusts hereinbefore expressed and declared of and concerning the same, and shall and may be peaceably and quietly had, held, and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, from Midsummer day now last past, received and taken accordingly, without any let, suit, trouble, denial, eviction, ejection, interruption, or disturbance of, from, or by the said George Gros or his heirs, or any other person or persons lawfully or equitably claiming or to claim by, from, through, under,

under, or in trust for him or them, or any of them, or by, from, through, or under any of his ancestors ; and that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by him the said George Gros, his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, and all right and title of dower, uses, trusts, wills, intails, statutes merchant and of the staple, recognizances, judgments, extents, executions, annuities, legacies, payments, rents and arrears of rent, forfeitures, re-entries, cause and causes of forfeiture and re-entry, and of, from, and against all and singular other estates, titles, troubles, charges, and incumbrances whatsoever, had made, done, committed, executed, occasioned, or suffered by him the said George Gros, or any of his ancestors, or by any other person or persons lawfully or equitably claiming or to claim by, from, through, under, or in trust for him, them, or any of them (except the now residue of a term of one thousand years hereinafter mentioned, and except,

cept, &c. &c.)^c; And moreover, that he the said George Gros and his heirs, and all and every other person or persons having, or lawfully, or equitably claiming, or who shall or may have, or lawfully or equitably claim any estate, right, title, trust, or interest of, in, to, or out of the messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, or any part thereof, by, from, through, under, or in trust for him or them, or by, from, through, or under any of his ancestors, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the proper costs and charges in the law of the said Henry Howard, his heirs or assigns, or of the said John James, his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause, or procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other lawful and reasonable acts, deeds, and things, devices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, releasing,

^c See note L.

conveying,

conveying, assuring, and confirming the messuages, or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and every part thereof, with the appurtenances, unto the said Henry Howard and John James, their heirs and assigns, to the uses, to and for the intents and purposes, and upon the trusts, hereinbefore expressed and declared of and concerning the same, or otherwise, as he the said Henry Howard, his heirs or assigns, shall direct or appoint; be the same by fine, feoffment, common recovery, deed inrolled, or not inrolled, or any other matter of record, or not of record, or otherwise howsoever, as by the said Henry Howard, his heirs or assigns, or his or their, or any of their counsel in the law, shall be reasonably advised, or devised, and required; so as, that no such further assurance or assurances contain, or imply, any further or other warranty, or covenant, than against the person or persons, who shall make and execute the same, and his, her, or their heirs, executors, and administrators, acts and deeds only; and so as, that the person or persons, who shall be required to make and execute any such further assurance or assurances, be not compelled, nor compel-

Lease and Release.

Recital of the assignment of a term.

lable, for the making or doing thereof, to go or travel from his, her, or their dwelling or respective dwellings, or usual place or places of abode or residence. And whereas by indenture of assignment bearing date on or about the day of this present month of , and made, or expressed to be made, between Andrew Andrews of of the first part, Benjamin Bell of of the second part, the said George Gros of of the third part, Charles Casey of Esquire, of the fourth part, and Daniel Davey of of the fifth part, the residue of a certain term of 1000 years devised, limited, or created of and in the hereinbefore mentioned premises, and divers other hereditaments in and by the last will and testament of Thomas Gros (the late father of the said George Gros), and such of the said hereditaments and premises comprised in the said term as are hereinbefore granted and released, or intended so to be, were and now stand assigned to the said Charles Casey, his executors, administrators, and assigns, In Trust for the said George Gros, his heirs and assigns, or such purchaser or purchasers, or other person or persons, to whom the same several hereditaments, or the freehold, reversion

reversion and inheritance thereof, are or from time to time shall be conveyed or assured, and to be assigned, surrendered, or otherwise disposed of, as he, or they respectively, or his or their respective heirs or assigns shall, as to their respective parts of the same premises, direct or appoint; and in the mean time In Trust to attend the inheritance of the same premises: **Now this Indenture further Witnesseth**, and for the considerations hereinbefore expressed, it is hereby agreed and declared between and by all the said parties to these presents, and particularly the said George Gros, for himself, his heirs, executors, and administrators, doth hereby declare and direct, that the said Charles Casey, his executors, administrators, and assigns, shall and do henceforth stand possessed of, and interested in the messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, or all such part or parts thereof, as are or were assigned to him by the said recited indenture, with the appurtenances, for all the now residue of the same term therein, In Trust for the said Henry Howard, his heirs and assigns, and to assign, surrender, and dispose of the same from time

Declaration that
the term shall
attend the inheritance.

Lease and Release.

to time, as he or they shall direct or appoint; and in the mean time, and subject thereto, In Trust to attend, wait upon, and go along with, the freehold, reversion, and inheritance of the same premises hereby granted and released, or intended so to be, in order to protect and preserve the same from all mesne charges and incumbrances (if any such there be). **And whereas** the several title deeds and writings relating to the said hereditaments and premises do concern the title not only of the hereditaments hereby granted and released, or intended so to be, but also of divers other estates and hereditaments of, or belonging to, the said George Gros, situate and being in the said County of Middlesex, and in other Counties in England; and therefore it hath been agreed, that the same several deeds and writings in the schedule hereunder written and particularized, shall remain in the custody and possession of him the said George Gros, his heirs and assigns, upon his entering into covenants with the said Henry Howard and John James to produce the same, and to permit copies to be made thereof, when thereunto required, in order to evidence and support their title thereto: **And therefore**

therefore this Indenture further witnesseth,
That in pursuance of the said last mentioned
agreement, and for the consideration herein-
before expressed, he the said George Grosz,
for himself, his heirs, executors, and admin-
istrators, doth hereby further covenant, pro-
mise, and agree, to and with the said Henry
Howard and John James, and each of them,
their and each of their heirs and assigns, that
he the said George Grosz, his heirs, execu-
tors, administrators, or assigns, shall and will,
from time to time, and at all or any time or
times hereafter, upon every reasonable re-
quest, and at the proper costs and charges of
the said Henry Howard and John James,
their heirs or assigns, or any or either of
them, they, or any, or either of them, giving
unto the said George Grosz, his heirs or
assigns, one calendar month's notice in writ-
ing of such their or his desire, produce and
shew forth, or cause to be produced and
shewn forth, to them, or either or any of
them, or to such person or persons as they,
or any of them, shall direct, desire, or re-
quire, or at any trial, hearing, or examina-
tion in any court of law or equity, or other
judicature, or upon the execution of any
commission in England, or elsewhere, as oc-

Covenant to
produce title
deeds.

cession shall be or require, the several deeds, evidences, and writings relating to, or concerning the title of the messuages or tenements, lands, hereditaments, and premises hereby granted and released, or expressed and intended so to be, mentioned in the schedule thereof hereunder written or hereunto annexed, and every or any of them, and permit and suffer copies of all or any of the same deeds or writings to be made, written, and taken, for the manifestation, defence, and support of the estate, right, title, interest, property, or possession of the said Henry Howard and John James, their heirs and assigns, or any or either of them, of, in, or to all or any part of the messuages or tenements, lands, hereditaments, and premises hereby granted and released, or expressed and intended so to be, with the appurtenances; unless the said George Gros, his heirs, executors, administrators, or assigns, shall be prevented or hindered from so doing by casualties of fire, or other inevitable accident. In witness, &c.

Marriage Settlement by Lease and Release.

The Release.

THIS Indenture, &c. Between Adam Parties.
Ash of, &c. of the first part, Benjamin
Brown of, &c. and Celia Brown, spinster,
one of the daughters of the said Benjamin
Brown, of the second part, Cornelius Crosby,
of, &c. and Charles Crompton of, &c. of
the third part, David Dun of, &c. and Daniel
Drew of, &c. of the fourth part, and Edgar
Edwards of, &c. and Edmund Eames of,
&c. of the fifth part.

Whereas a marriage is intended to be shortly had and solemnized between the said Adam Ash and Celia Brown; and the said Benjamin Brown hath agreed to pay the sum of £. unto the said Adam Ash, as and for the marriage-portion of the said Celia Brown his daughter.

Now this Indenture Witnesseth, That in consideration of the said intended marriage, and of the sum of £. of

L. 4

lawful

Lease and Release.

lawful money of Great Britain to the said Adam Ash in hand paid by the said Benjamin Brown, at or before the sealing and delivery of these presents; the receipt and payment whereof he the said Adam Ash doth hereby acknowledge, and of and from the same, and every part thereof, doth release and acquit the said Benjamin Brown, his heirs, executors, administrators, and assigns, and every of them, for ever by these presents; and for making such provision and settlement for and upon the said Celia Brown, and the issue of the said intended marriage as hereinafter mentioned; and for settling and assuring the hereditaments hereinafter granted and released, or intended so to be, with the appurtenances, to the uses, upon the trusts, for the intents and purposes, and under and subject to the powers, provisoes, declarations, limitations, and agreements hereinafter limited, expressed, and declared of and concerning the same; and for and in consideration of the sum of five shillings of like money to the said Adam Ash in hand paid by the said Cornelius Crosby and Charles Crompton, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged),

ledged), he the said Adam Ash Hath granted, bargained, sold, released, and confirmed, and by these presents Doth grant, bargain, sell, release, and confirm unto the said Cornelius Crosby and Charles Crompton (in their actual possession now being by virtue of a bargain and sale to them thereof made by the said Adam Ash, in consideration of five shillings, by indenture bearing date the day next before the day of the date hereof, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession) and to their heirs, all, &c.; and all houses, outhouses, &c., and the reversion and reversions, remainder and remainders, and yearly and other rents, issues, and profits of all and singular the premises; and all the estate, right, title, interest, trust, property, claim, and demand whatsoever of him the said Adam Ash, of, in, to, or out of the said messuages, lands, tenements, hereditaments, and premises, and every of them, and every part and parcel of them, and every of them:

To

Habendum.

To Have and To Hold the messuages or tenements, lands, hereditaments, and other the premises hereby granted and released, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said Cornelius Crosby and Charles Crompton, their heirs and assigns for ever; nevertheless to the uses, upon the trusts, for the intents and purposes, and under and subject to the powers, provisoes, limitations, declarations, and agreements hereinafter limited, expressed, and declared of and concerning the same; that is to say,

To the use of
the intended
husband in fee,
until marriage;
and afterwards.

To the use of the said Adam Ash, his heirs and assigns, until the said intended marriage shall be had and solemnized; and from and immediately after the solemnization thereof,

To the use of
trustees for
99 years; Re-
mainder

To the use of the said David Dun and Daniel Drew, their executors, administrators, and assigns, for and during, and unto the full end and term of 99 years thence next ensuing, and fully to be complete and ended, if both of them the said Adam Ash and Celia Brown, his intended wife, shall so long live; upon the trusts, and subject to the provisoes and agreements hereinafter expressed

pressed and declared of and concerning the same; and from and after the end, expiration, or other sooner determination of the said term of 99 years, and in the mean time subject thereto, and to the trusts thereof,

To the use of the said Adam Ash and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste; and from and after the determination of that estate by forfeiture or otherwise,

To the use of
the intended
husband for life;
Remainder

To the use of the said Cornelius Crosby and Charles Crompton and their heirs, during the life of the said Adam Ash, In Trust to support the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries or bring actions, as the case may require; yet nevertheless to permit and suffer the said Adam Ash and his assigns to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and benefit; and from and immediately after the decease of the said Adam Ash,

To the use of
trustees to pre-
serve contingent
Remainders;
Remainder

To

To the use and intent, that the intended wife may receive a rent-charge for her jointure and in bar of dower; with

To the use, intent, and purpose, that the said Celia Brown (in case she shall survive the said Adam Ash) and her assigns, shall and may, from and after the decease of the said Adam Ash, yearly have, receive, take, and enjoy, for and during the term of her natural life, one annual sum, or yearly rent charge, of £. of lawful money of Great Britain, to be yearly issuing, going, and payable out of, and charged and chargeable upon, all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or intended so to be; such yearly rent charge, or sum of £. to be in full for the jointure of the said Celia Brown, and in lieu, bar, and satisfaction of and for her whole dower or thirds at common law, or by or on account of custom, free bench or widow's part, which she can or may, or otherwise might have, or claim, of, in, or out of all and every, or any of the freehold, copyhold, or customary manors, messuages, lands, tenements, and hereditaments whereof, or whereunto the said Adam Ash now is, or at any time or times during the said intended coverture, shall be seised or entitiled, for any estate of freehold, or copyhold of inheritance,

or

or to which dower or free bench is incident; and to be paid to the said Celia Brown or her assigns, at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, on the four most usual feasts, or days of payment of rent in the year (that is to say) on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year, by equal and even portions; without making any deduction or abatement whatsoever thereout, or out of any part thereof, for or in respect of any taxes, charges, rates, assessments, or impositions whatsoever, either already taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed on the said several hereditaments and premises, or any of them, or any part thereof, or on the said annual sum or yearly rent charge of £. , or any part thereof, or on the said Celia Brown or her assigns in respect of the same, by authority of parliament, or otherwise, or for or in respect of any other matter, cause, or thing whatsoever; the first quarterly payment to begin and be made on such of the said days as shall first happen after the decease of the said Adam Ash.

And

Lease and Release.

And to and for this further use, intent, and purpose, that in case the said annual sum or yearly rent charge of £. , or any part thereof, shall at any time or times be in arrear or unpaid, by the space of fourteen days next over or after any, or either of the said days, whereon the same ought to be paid as aforesaid, then and so often, it shall and may be lawful to and for the said Celia Brown and her assigns, during her natural life, into and upon the said messuages, lands, tenements, hereditaments, and premises so charged with the said annual sum, or yearly rent charge, of £. as aforesaid, and into and upon every or any part or parcel thereof, to enter and distrain; and the distress and distresses then and there found to take, lead, drive, carry away, and impound; and in pound to detain and keep, until the said annual sum or yearly rent charge, and all arrears thereof, together with all costs, charges, and expences occasioned and incurred by taking and keeping such distress and distresses, shall be fully paid and satisfied; and in default of payment thereof, or of any part thereof respectively, in due time after such distress or distresses shall be taken, to appraise, sell, and dispose of, or cause to be appraised, sold, and disposed

posed of, such distress or distresses, or otherwise to act therein according to the due course of law, and in like manner as in cases of distress taken for non-payment of rent reserved upon common leases; to the intent, that she the said Celia Brown, and her assigns, shall and may be fully paid and satisfied the said annual sum, or yearly rent charge of £. and all arrears thereof, and all costs, charges, and expences attending the non-payment, and recovery of the same.

And to and for this further use, intent and purpose, that in case the said annual sum, or yearly rent charge of £. or any part thereof, shall at any time or times be in arrear or unpaid by the space of twenty-eight days next after any, or either of the said days hereinbefore mentioned and appointed for payment thereof, then and so often as the same shall happen (although no formal or legal demand shall be made), it shall and may be lawful to and for the said Celia Brown and her assigns, during the term of her natural life, into and upon all and singular the said hereditaments and premises, or into and upon any part thereof, in the name
of

and power of
entry.

Lease and Release.

of the whole, to enter, and the same to have, hold, occupy, possess and enjoy, and the rents, issues and profits thereof, and of every part thereof, to have, receive and take to and for her and their own use and benefit, until she and they shall thereby and therewith, or by any other ways, be fully paid and satisfied the said annnal sum, or rent charge of £. , and all arrears thereof, and all such arrears of the same, as shall grow due or incur during the time, that she or they shall by virtue of such entry or entries be in possession of the premises, or any part thereof; together with all costs, charges, and expences whatsoever attending, or occasioned by, the non-payment, or recovery of the same, or any part thereof, or in relation thereto; such possession, when taken, to be without impeachment of waste.

Remainder (subject to the rent-charge) to the use of trustees for 500 years.

And as, to, for and concerning all and singular the messuages, lands, tenements, hereditaments and premises hereby granted and released, or intended so to be, with the appurtenances, from and after the decease of the said Adam Ash, subject to, and charged with, the said yearly rent-charge or sum of £. , and to the remedies hereby

by provided for the recovery thereof, To the use of the said Edgar Edwards and Edmund Eames, their executors, administrators, and assigns, for and during, and unto the full end and term of five hundred years thence next ensuing, and fully to be complete and ended, without impeachment of, or for any manner of waste; upon the several trusts, to and for the several intents and purposes, and under and subject to the several provisos and agreements hereinafter expressed and declared of and concerning the same term; and from and after the end, expiration, or other sooner determination of the said term of five hundred years, and in the mean time subject thereto, and to the trusts thereof, and charged and chargeable as aforesaid,

To the use of the first son of the body of the said Adam Ash on the body of the said Celia Brown, his intended wife, to be begotten, and of the heirs male of the body of such first son lawfully issuing; and for default of such issue,

To the use of
the first son in
tail male; re-
mainder

To the use of the second, third, fourth, fifth,
and all and every other the son and sons of the

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M

body

To the use of
the second and
other sons in
tail male; re-
mainder

body of the said Adam Ash on the body of the said Celia Brown to be begotten, severally, successively, and in remainder, one after another, as they and every of them shall be in seniority of age and priority of birth, and of the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing; the elder of such sons, and the heirs male of his body issuing, being always to be preferred and to take before the younger of such sons, and the heirs male of his and their body and respective bodies issuing; and for default of such issue,

To the use of
the daughters,
as tenants in
common, in tail
general;

With cross re-
mainders be-
tween them;
with remainder

To the use of all and every the daughter and daughters of the said Adam Ash on the body of the said Celia Brown, his intended wife, to be begotten, equally to be divided amongst them, share and share alike, as tenants in common, and not as joint tenants, and of the several and respective heirs of the body and bodies of all and every such daughter and daughters lawfully issuing; and in case there shall be a failure of issue of any one or more of such daughters, then as well as to the original share or shares of, as the share or shares surviving or accruing to, such last-mentioned daughter

daughter or daughters, or her or their issue, to the use of all and every other the daughter and daughters of the said Adam Ash on the body of the said Celia Brown to be begotten, to be divided between them, if more than one, share and share alike, as tenants in common, and not as joint tenants, and of the several and respective heirs of their bodies issuing; and in case all such daughters but one shall happen to die without issue, or if there shall be but one such daughter, then to the use of such surviving or only daughter, and of the heirs of her body lawfully issuing; and for default of such issue,

To the use of the said Adam Ash, his heirs and assigns, for ever.

To the use of
the intended
husband in fee.

And as, to, for and concerning the said term of ninety-nine years hereinbefore limited in use to the said David Dun and Daniel Drew, their executors, administrators, and assigns as aforesaid, it is hereby agreed and declared that the same is so limited to them upon the trusts, for the intents and purposes, and under and subject to the agreements and provisoes hereinafter expressed and declared of and concerning the same; (that is to say)

Trusts declared
of the term of
ninety-nine
years;

M 2

Upon

In trust for securing pin-money for the wife;

Upon Trust, that they the said David Dun and Daniel Drew, and the survivor of them, and the executors, administrators, and assigns of such survivor, shall and do, during the joint lives of the said Adam Ash and Celia Brown, his intended wife, by, with, and out of the rents, issues, and profits of the hereditaments and premises comprised in the said term of ninety-nine years, or by mortgage, sale, or other disposition of the said hereditaments and premises, or any of them, or any part thereof, for all or any part of the said term of ninety-nine years therein, or by bringing actions against any of the tenants or occupiers of the premises for the rent then in arrear, or by all or any of the said ways or means, or by any other ways or means, levy and raise the annual sum of £. of lawful money of Great Britain, free and clear of and from all taxes and deductions whatsoever; and do and shall pay, apply, and dispose of the same by quarterly payments, on the days of payment hereinbefore mentioned, by even and equal portions, unto such person or persons, and for such intents and purposes only, as the said Celia Brown, by any writing or writings under her hand, from time to time, notwithstanding

standing her coverture, shall direct or appoint; and in default of such direction or appointment, shall and do pay the said annual sum of £. , or so much thereof, whereof she shall make no such direction or appointment as aforesaid, into the proper hands of the said Celia Brown, for her sole and separate use and benefit, and not to be subject to the debts, contracts, engagements, or controul of the said Adam Ash, her intended husband; and the receipt or receipts in writing of the said Celia Brown, and of such person or persons, as she shall from time to time direct or appoint to receive all or any part of the said annual sum of £. , shall from time to time, notwithstanding the said intended coverture, be good and effectual receipts and discharges for such sums of money, as in such receipts and discharges shall be respectively expressed to be received; the first payment of the said annual sum of £. to be made on such of the said days of payment, as shall first happen after the solemnization of the said intended marriage :

And upon further Trust, that they the said David Dun and Daniel Drew, their execu-
M 3 tors,
and subject thereto in trust for the intended husband.

tors, administrators, and assigns, shall and do permit and suffer the said Adam Ash and his assigns, to receive and take the residue and overplus of the said rents, issues, and profits of the premises, after full payment and satisfaction of the said annual sum of £. , and all costs and expences attending the execution of the aforesaid trusts, or in relation thereto, to and for his and their own use and benefit.

Provision, that no more than two years arrear of pin-money shall be recoverable.

Provided always, and it is hereby declared to be the true intent and meaning of the said parties hereto, that if at the time of the decease of either of them the said Adam Ash and Celia Brown, or at any time during their joint lives, there shall, through the wilful neglect or default of her the said Celia Brown or her trustees, be more in arrears of the said annual sum of £. than two years payment thereof, then, and in every such case, no further or other sum shall be raised to answer such arrears, than what shall amount in the whole to two years payment of the said annual sum; and the residue of the said arrears shall sink into the inheritance of the same premises, and the said trustees, to whom the same are so limited,

limited, their executors, administrators, and assigns, shall thenceforth be freed, exempted, and discharged from the levying, raising, and payment of such residue of the said arrears.

Provided also nevertheless, that immediately after the decease of either of them the said Adam Ash and Celia Brown first dying, and after payment of all arrears of the said annual sum of £. (or of so much of such arrears as according to the proviso and declaration next hereinbefore expressed ought to be paid, in case of there being more in arrear than two years payment thereof), and when the said David Dun and Daniel Drew, and each of them, and their respective executors, administrators, and assigns, shall be fully reimbursed and satisfied all costs, charges, and expences occasioned by, or relating to, the trusts of the said term of ninety-nine years (which they are hereby respectively impowered to raise by all or any of the ways or means aforesaid, and to retain accordingly); then and immediately thenceforth, the said term of 99 years of and in the said messuages, lands, tenements, hereditaments, and premises therein comprised, or so much thereof, as shall remain undif-

Cesser of this term.

Lease and Release.

posed of for the purposes aforesaid, shall cease, determine, and be utterly void to all intents and purposes whatsoever.

Trusts declared
of the term of
500 years.

And as to, for and concerning the said term of five hundred years hereinbefore limited in use to the said Edgar Edwards and Edmund Eames, their executors, administrators, and assigns as aforesaid, it is hereby agreed and declared that the same is so limited to them upon the trusts, for the intents and purposes, and under and subject to the provisos, declarations, and agreements hereinafter mentioned, expressed and declared of and concerning the same; (that is to say),

In trust, in the
first place, for
securing the
rent-charge li-
mited to the
wife.

Upon Trust, in case the said yearly rent-charge or sum of £. , or any part thereof, shall be behind and unpaid by the space of forty days next over, or after, any or either of the said days of payment, whereon the same is appointed to be paid as aforesaid (although no formal or legal demand shall be made); then, and so often, that they the said Edgar Edwards and Edmund Eames, or the survivor of them, his executors or administrators, shall and do from
time

time to time, by and out of the rents, issues, and profits of the messuages, lands, tenements, hereditaments, and premises comprised in the same term of five hundred years, or by demising, leasing, selling, or mortgaging the same premises, or any of them, or any part thereof, for all, or any part of, the same term, or by bringing actions against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear, or by such other ways and means, as to them or him shall seem meet, raise and levy such sum and sums of money, as shall be sufficient from time to time to pay and satisfy the said yearly rent-charge, or sum of £. , or so much thereof, as shall from time to time happen to be in arrear and unpaid; together with all loss, costs, charges, damages, and expences, which the said Celia Brown, or her assigns, or the said Edgar Edwards and Edmund Eames, or the survivor of them, his executors, administrators, or assigns, or any of them, shall sustain, expend, or be put unto, for or by reason of the non-payment of the same yearly rent charge, or sum of £. , or any part thereof, at the days and times, and in manner before appointed for the payment thereof;

thereof; and shall and do pay, apply, and dispose of the same monies accordingly:

And in trust in the next place, to raise portions for younger children;

And upon further Trust, in case there shall be one or more child or children of the said Adam Ash on the body of the said Celia Brown, his intended wife, to be begotten (other than and besides an eldest or only son), that they the said Edgar Edwards and Edmund Eames, or the survivor of them, his executors or administrators, shall and do, after the decease of the said Adam Ash, or in the lifetime of the said Adam Ash with his consent, to be signified by some writing under his hand and seal (but subject and without prejudice to the raising and paying the said yearly rent-charge or sum of £. , limited to the said Celia Brown for her life, and to such remedies for recovering the same as aforesaid), by mortgage, sale, demise, or other disposition of the messuages, lands, tenements, hereditaments, and premises comprised in the said term of five hundred years, or of a competent part thereof, for all or any part of the same term, or by and out of the rents, issues, and profits thereof, or by bringing actions against the tenants or occupiers of the same premises, or any of them,

for

for the rents then in arrear, or by all or any of the said ways and means, or by such other ways and means, as they the said Edgar Edwards and Edmund Eames, or the survivor of them, his executors or administrators shall think fit, raise and levy, or borrow and take up at interest, for the portion or portions for such child or children, (other than and besides an eldest or only son) the sum or sums of money hereinafter mentioned; (that is to say) if there shall be but one such child, other than and besides an eldest or only son, the sum of four thousand pounds of lawful money of Great Britain, as or for his or her portion; and to be paid and payable to, and to become vested in, such younger child (be the same a son or a daughter) at or upon such age, day, or time as the said Adam Ash by any deed or writing, to be signed, sealed, and delivered by him in the presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, to be by him signed and published in the presence of, and attested by, three or more credible witnesses, shall direct or appoint; and in default of such direction or appointment, to be paid to such younger child, being a son, at his age
of

if but one
£. 4000.

to be paid according to direction of the husband;

and in default of appointment, to a son at 21 or daughter at 21, or marriage;

of twenty-one years, or being a daughter, at her age of twenty-one years, or day of marriage (which shall first happen), if the same age or time shall happen after the decease of the said Adam Ash; but if the same shall happen in the lifetime of the said Adam Ash, then the portion of such younger child shall be considered as a vested interest in him or her at or upon the same age or time; and in that case the payment thereof shall be postponed until after the decease of him the said Adam Ash, unless he shall signify his consent in writing under his hand and seal, that the same shall be raised and paid in his life time; and if there shall be two such children and no more (other than and besides an eldest or only son), then the sum of six thousand pounds of like lawful money for their portions; and if there shall be three or more such children (other than and besides an eldest or only son), then the sum of eight thousand pounds of like lawful money for their portions: The said sum and sums of money, intended for the portions of such younger children (being more than one), to be shared and divided between or among them in such parts or proportions, and to vest in, and be paid to, such

*If but two
younger children
£. 6000.*

*and if three or
more, £. 8000.*

*to be shared ac-
cording to the
husband's ap-
pointment;*

such children respectively at or upon such ages, days, or times, and to be subject to such charges, provisos and limitations (such charges and limitations being for the benefit of some or one of them), and in such manner, as the said Adam Ash, by any deed or deeds, writing or writings to be by him signed, sealed, and delivered in the presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, to be signed and published by him in the presence of, and attested by, three or more credible witnesses, shall direct or appoint; and in default of such direction or appointment, to be equally divided between or among such younger children, share and share alike; the share or shares of such of the said children, as shall be a younger son or sons, to be paid to him or them, at his or their age or respective ages of twenty-one years; and the share or shares of such of them, as shall be a daughter or daughters, to be paid to her or them, at her or their age or respective ages of twenty-one years, or day or respective days of marriage (which shall first happen), in case the same shall happen after the decease of the said Adam Ash; but in case any of such younger children,

and in default of appointment, to be equally divided.

children, being a younger son or sons, shall attain his or their age or respective ages of twenty-one years, or being a daughter or daughters, shall attain her or their age or respective ages of twenty-one years, or be married as aforesaid, in the lifetime of the said Adam Ash, then the share or shares of such younger son or sons so attaining the age of twenty-one years, and of such daughter or daughters so attaining that age, or marrying in the lifetime of the said Adam Ash, shall be a vested interest or vested interests in him, her, or them respectively; but the payment of such share or shares shall be postponed till after the decease of the said Adam Ash, unless he shall signify such consent as aforesaid, that the same or any of them, shall be raised and paid in his lifetime.

Declaration and provision in case of a partial appointment.

Provided always, and it is hereby agreed and declared between and by the said parties hereto, that in case any appointment shall be made in pursuance of the powers aforesaid, or either of them, which shall only extend to a part or parts of the sum or sums of money, hereby intended for the portion or portions of such younger child or children as aforesaid, such appointment shall be valid and effectual

effectual notwithstanding the non-appointment of the remaining part or parts of such portion or portions; but in that case any younger child entitled to a share under such appointment shall be entitled to no further share of and in the remaining or unappointed part or parts of the monies, hereby intended for portions as aforesaid, until every other child for whom a portion is hereby intended shall have received and been paid so much out of such unappointed residue, as will make his or her portion or share equal (if not otherwise so) to that of the child so taking under such appointment as aforesaid.

And upon further Trust, that they the said Edgar Edwards and Edmund Eames, and the survivor of them, his executors or administrators, shall and do, after the decease of the said Adam Ash (subject and without prejudice as aforesaid), by and out of the rents, issues, and profits of the messuages, lands, tenements, hereditaments and premises comprised in the said term of five hundred years, levy and raise for the maintenance and education of all, or any, of such children, for whom a portion or portions is

or

Provision for
maintenance.

or are hereby intended to be provided as
aforesaid, such yearly sum and sums of mo-
ney as hereinafter mentioned; (that is to
say) until such child or children shall respec-
tively attain the age of twelve years, such
yearly sum for each of them, as will be
equivalent to the interest of the portion here-
by intended for him or her as aforesaid, af-
ter the rate of two pounds for every one
hundred pound by the year; and from and
after the age of twelve years, and until such
portion or respective portions shall become
payable, such yearly sum for each such
child, as will be equivalent to the inte-
rest of the portion hereby intended for him
or her as aforesaid, after the rate of four
pounds for every one hundred pounds by
the year; and also shall and do, at their or
his discretion, either themselves pay and
apply such sums for maintenance and educa-
tion of such child or children accordingly,
or shall and do (if they the said trustees or
trustee for the time being shall think proper)
pay the said several sums of money to the
guardian or guardians for the time being of
such child or children respectively, to be by
such guardian or guardians applied for or
towards the maintenance and education of
such

such child or children respectively; and it is hereby agreed and declared, that such respective sums for maintenance as aforesaid, shall be paid by half yearly payments on the days following; (that is to say) on the *first* day of *January* and *July* day of *May* in each and every year, by even and equal portions; the first payment thereof to begin and be made on such of the said days, as shall first happen after the decease of the said Adam Ash.

Provided always, and it is hereby agreed and declared between and by the said parties hereto, that if there shall be more than one such child, for whom portions are hereby provided as aforesaid, and any of them, being a younger son or sons, shall depart this life, or become an eldest or only son, before he or they respectively shall attain the age of twenty-one years, or being a daughter or daughters shall depart this life, before she or they respectively shall attain that age, without being, or having been, married; then and in such case, and in default of and subject to any such appointment as aforesaid, the portion hereby intended to be provided for each such daughter, and for each such

Clause of survivorship.

son so dying, or becoming an eldest or only son, or so much and such part thereof as shall not be sooner advanced for any younger son or sons as hereinafter mentioned, shall accrue and belong to the survivor or survivors, and other or others of such children (not being an eldest or only son), and shall vest in, and be paid to him, her, or them (if more than one), in equal parts and shares, at or upon such and the same ages, days and times respectively, and in such and the same manner as is hereinbefore declared touching or concerning his, her, or their original portion or portions, or as near thereto as circumstances will permit; and that in case any other or others of such children shall die, or become an eldest or only son as aforesaid, before such accruing or surviving part or share, parts or shares, shall become vested as aforesaid, then all and every such accruing or surviving part or share, parts or shares, shall again be subject and liable to such new chance, contingency, and condition of accruer to the survivor or survivors, and other or others of such children, as before is declared touching his, her, and their original portion and portions: But so nevertheless, that no one child shall by survivorship
or

or otherwise have, or be entitled to, more than the sum of four thousand pounds for his or her portion; nor any two children more than the sum of six thousand pounds between them for their portions.

Provided always, and it is hereby agreed and declared between and by the said parties hereto, that it shall and may be lawful to and for the said Edgar Edwards and Edmund Eames, and the survivor of them, his executors or administrators, at any time or times in the lifetime of the said Adam Ash, with his consent, signified by some deed or deeds, writing or writings, to be sealed and delivered by him in the presence of, and to be attested by, two or more credible witnesses, and at any time or times after his decease, by and of the proper authority of the said Edgar Edwards and Edmund Eames, or the survivor of them, his executors or administrators, as they or he shall see occasion, to levy and raise by all or any of such ways and means as aforesaid (but subject nevertheless and without prejudice as aforesaid.) any sum or sums of money, in part of the portion or portions hereby intended for such of the said children, as shall

Power for the trustees to raise a part of the portions for the advancement of younger sons.

Lease and Release.

be a younger son or sons; and shall and do, with the consent in writing of the said Adam Ash during his life, and after his decease, then at their or his discretion, pay and apply the monies, so to be raised, for the purpose of placing and putting such younger son or sons, for whom, or in part of whose then apparent portion or portions, such sum or sums of money shall be so raised, in or to any trade, business, profession, or employment, or otherwise, for his or their advancement in the world, notwithstanding his or their portion or portions shall not then have become payable as aforesaid; so nevertheless, that such sum and sums of money, so to be raised as last mentioned, shall not exceed one half part of the apparent portion or portions of such younger son or sons respectively; and so nevertheless, that such sum and sums of money shall go, be considered, and taken as part of the portion or portions hereby provided for such child or children, for whose benefit such sum or sums shall be raised as aforesaid.

In trust to permit and suffer the persons in remainder to receive the overplus of the rents.

And upon this further Trust, that they the said Edgar Edwards and Edmund Eames, and the survivor of them, his executors and administrators,

administrators, do and shall permit and suffer the person or persons, to whom the next and immediate reversion or remainder expectant upon the determination of the said term of five hundred years of and in the premises therein comprised, shall for the time being belong, to receive the residue or surplus of the rents and profits, which shall remain after, and not be applied in, or towards the execution and performance of the trusts hereby declared of the said term of five hundred years.

Provided always, That no demise, sale, or mortgage, shall be made for raising such portion or portions as aforesaid, until some one of the said portions shall become payable under or by virtue of the trusts aforesaid, unless with the consent of the said Adam Ash, testified as aforesaid, or unless the same shall be made for the purpose of raising any sum or sums of money for the advancement of a younger son or sons, pursuant to the power or authority hereinbefore in that behalf contained.

No sale until a portion shall become payable.

Provided also, and it is hereby agreed and declared between and by the said parties

N 3

Money advanced by the father in his lifetime to be considered as part of the portions.

Lease and Release.

ties hereto, that in case the said Adam Ash shall in his lifetime give or advance any sum or sums of money for or towards the preferment or advancement of any of the said children, being a younger son or sons, in the way of, or for the placing him or them in any profession, business, or employment, or being a daughter or daughters in marriage; then and in such case, if any such sum or sums of money so to be advanced, shall be equal to, or exceed the portion or portions hereinbefore intended to be provided for such child or children respectively, such advanced sum or sums shall be accounted in full for the portion or portions so as aforesaid hereinbefore provided for such child or children respectively; but if such advanced sum or sums shall be less than the portion or portions hereinbefore provided or intended for such child or children respectively, then such advanced sum or sums shall be accounted as part of the portion or portions so as aforesaid hereinbefore provided or intended for such child or children respectively; unless he the said Adam Ash shall declare the contrary thereof respectively by any writing under his hand, attested by two or more credible witnesses.

Provided

Provided also, and it is hereby further agreed and declared, That when the trusts hereinbefore declared of and concerning the same term shall have been executed and performed, or satisfied, or shall have become unnecessary, or incapable of taking effect, and the costs and charges of the trustees of the same term, their executors, administrators, and assigns, in and about the execution and performance of the same trusts, shall have been fully paid and satisfied (and which they are hereby respectively authorized and empowered to levy and raise by all or any of the ways and means aforesaid, and to retain accordingly); then and immediately thenceforth the said term of five hundred years of and in the premises therein comprised, or so much thereof as shall remain unfold and undisposed of for the purposes aforesaid, shall cease, determine, and be utterly void to all intents and purposes whatsoever.

Cesser of the term.

Provided always, and it is hereby agreed and declared, that it shall and may be lawful to and for the said Adam Ash, from time to time during his life, and after his decease, then to and for the guardian or guardians for the time being of any child or children

Power enabling the husband to make leases.

of the said Adam Ash, on the body of the said Celia Brown to be begotten, who by virtue of, or under the limitations hereinbefore contained, shall be entitled to the actual freehold or inheritance of the hereditaments and premises hereby granted and released, or intended so to be, from time to time, during the minority of such child or children respectively, by any indenture or indentures to be sealed and delivered by him or them respectively, in the presence of, and to be attested by two or more credible witnesses, to demise or lease all or any part or parts of the hereditaments and premises hereby granted and released, or intended so to be, with the appurtenances, to any person or persons, for any term or number of years, not exceeding twenty-one years in possession, and not in reversion, or by way of future interest; so as, that there be reserved and made payable on every such lease, during the continuance thereof, the best and most improved yearly rent or rents, to go along with, and be incident to, the immediate reversion of the premises so to be leased, that can or may be reasonably had or gotten for the same; without taking any fine, premium, or foregift, for the making thereof; and so as,

that in every such lease there be contained a condition of re-entry on the non-payment of the rent or rents to be thereon or thereby respectively reserved, by the space of twenty-one days next after the same shall become due and payable; and so as, that the lessee or the respective lessees, to whom such lease or leases shall be made, seal and deliver a counterpart or counterparts of such lease or leases; and so as, that none of the lessees, to whom any such lease or leases shall be made, be, by any clause or words therein contained, authorized to commit waste, or exempted from punishment for committing waste; any thing herein contained to the contrary thereof notwithstanding.

Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that it shall and may be lawful to and for the said Cornelius Crosby and Charles Crompton, and the survivor of them, and the heirs of such survivor, and they and he are hereby authorized and empowered, at any time or times hereafter, at the request and by the direction of the said Adam Ash and Celia Brown during their joint lives, and in case the said Celia

Brown

Power of sale
and exchange.

Brown shall depart this life in the lifetime of the said Adam Ash, then at the request and by the direction of him the said Adam Ash during his life (such request and direction to be testified by some writing or writings under the hands and seals of the said Adam Ash and Celia Brown, or under the hand and seal of the said Adam Ash, in case he shall be the survivor of them, and to be attested by two or more credible witnesses), to make sale, alien, and dispose of, or to convey in exchange for, or in lieu of, other messuages, lands, and hereditaments, to be situate somewhere in that part of Great Britain called England, all or any part of the hereditaments hereby granted and released, or intended so to be, with the appurtenances, and the inheritance thereof in fee-simple, to any person or persons whomsoever, either together or in parcels, and for such price or prices in money, or for such equivalent or recompence in messuages, lands, or hereditaments, as to them the said Cornelius Crosby and Charles Crompton, or the survivor of them, or his heirs, shall seem reasonable; and for the intents and purposes aforesaid, or any of them, it shall and may be lawful to and for the said Cornelius Crosby

Crosby and Charles Crompton, and the survivor of them, and the heirs of such survivor, at such request, and with such direction, and so testified as aforesaid, by any deed or deeds, writing or writings, to be by them the said Cornelius Crosby and Charles Crompton, or the survivor of them, or his heirs, signed, sealed, and delivered in the presence of, and attested by, two or more credible witnesses, to revoke, determine, and make void all and every the uses, estates, trusts, limitations, powers, provisoes, and agreements, hereinbefore created, expressed, declared, and contained, of and concerning the hereditaments so to be sold or exchanged, or any part thereof; and by the same, or any other deed or deeds, writing or writings, to be by him or them signed, sealed, and delivered, and attested as aforesaid, to limit and appoint, direct and declare, such use or uses, estate or estates, trust or trusts of the hereditaments, the uses whereof shall be so revoked, which it shall be thought necessary or expedient to limit, declare, or appoint in order to effect such sale, exchange, or disposition as aforesaid; and that upon any such exchange as aforesaid, it shall and may be lawful for the said Cornelius Crosby

Crosby and Charles Crompton, or the survivor of them, or his heirs, to receive or take any sum or sums of money by way of equality of exchange; and also upon payment of any money to arise by such sale of the said hereditaments, or any part thereof, or to be received or taken for, or by way of, equality of exchange, it shall and may be lawful to and for the said Cornelius Crosby and Charles Crompton, or the survivor of them, or his heirs, to give and sign receipts for the money, for which the same shall be so sold, or so to be paid for equality of exchange; which receipts shall be sufficient discharges to the person or persons paying the same respectively for the money, for which the same shall be so given; or for so much thereof as in such receipts shall be respectively acknowledged or expressed to be received; and that the person or persons paying the same respectively, and taking such receipt or receipts for the same as aforesaid, shall not afterwards be obliged to see to the application, or be in anywise answerable or accountable for any loss, misapplication, or non-application of such money, or any part thereof; Provided nevertheless, and it is hereby also agreed and declared between and
by

by the said parties hereto, that when all or any part or parcel, or parts or parcels, of the said hereditaments hereby made saleable as aforesaid, shall be sold in pursuance of these presents for a valuable consideration in money, and also when any sum or sums of money shall be received for equality of exchange in pursuance of the power hereinbefore contained; then they the said Cornelius Crosby and Charles Crompton, or the survivor of them, or his heirs, shall with all convenient speed (with the consent of the said Adam Ash and Celia Brown during their joint lives, or if the said Adam Ash shall survive the said Celia Brown, then with the consent of the said Adam Ash during his life, to be testified by writing under their or his hands or hand, and after the decease of the said Adam Ash, then with the consent in writing of the person or persons, who would, under or by virtue of the limitations hereinbefore contained, or to be contained or referred to in the settlement or conveyance hereinafter directed, or any of them, be for the time being in the actual possession, or entitled to the receipt of the rents and profits of the hereditaments to be purchased as hereinafter is mentioned or directed, in case
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the same were then actually purchased, if such person or persons be of full age, but if not, then with the consent in writing of the guardian or guardians for the time being of such person or persons respectively) lay out and invest all and every the sum and sums of money, which shall arise by such sale or sales, and be paid for equality of exchange as aforesaid, in the purchase of other messuages, lands, and hereditaments in possession, to be situate, being, or arising somewhere in that part of Great Britain called England, of a clear and indefeasible estate of inheritance in fee simple (whereof any part, not exceeding one-fourth part in any one purchase, may, if the parties interested shall think fit, be copyhold of inheritance); and as well the hereditaments so to be purchased, as all and every the hereditaments so to be received in exchange as aforesaid, shall thereafter forthwith be settled, conveyed, and assured to such uses, upon such trusts, and to and for such and the same ends, intents, and purposes, and with, under, and subject to the same powers, provisoes, conditions, and agreements, as are in and by these presents limited, expressed, declared, and contained, of and concerning the hereditaments hereby

hereby granted and released, or intended so to be ; or as near thereto as the death of parties, and other contingencies, or the circumstances of the case, will then permit: Provided always, and it is hereby further agreed and declared between and by the said parties to these presents, that in the mean time, and until the money to arise by such sale or sales, or to be received for equality of exchange as aforesaid, shall be laid out and invested in a purchase or purchases in the manner hereinbefore mentioned, it shall and may be lawful to and for the said Cornelius Crosby and Charles Crompton, and the survivor of them, and the heirs of such survivor, by and with the consent and approbation of the said Adam Ash and Celia Brown, or of the survivor of them, to be testified as last mentioned, and from and after the decease of such survivor, then by and of the proper authority of the said trustees or trustee for the time being, from time to time to place out and invest such sum or sums of money in the public stocks or funds, or at interest upon government or real securities; and from time to time, with such consent, and so testified as aforesaid, or of their or his own proper authority, as the
case

case shall happen, to alter, vary, sell, transfer, and dispose of such stocks, funds, or securities, and again to lay out and invest the money arising by such alteration, sale, transfer, or disposition, upon new or other stocks or funds, or at interest upon government or real securities of the like nature, as often as they shall think proper; and the interest, dividends, and annual proceeds arising from such stocks, funds, or securities, shall from time to time go and be paid to such person or persons, and be applied to such uses, intents, and purposes, and in such manner as the rents and profits of the hereditaments, to be purchased therewith, would go and be payable or applicable, in case such purchase or purchases were actually made.

Power of appointing new trustees.

Provided always, and it is hereby also agreed and declared, that in case the trustees in and by these presents nominated and appointed, or any or either of them, their or any or either of their heirs, executors, or administrators, or any succeeding or other trustees or trustee of the said trust estate and premises, to be nominated as hereinafter mentioned, or their, or any of their heirs, executors, or administrators, shall happen to die, or be desirous to be discharged of and from, or refuse

or

or become incapable to act in the trusts here-
inbefore expressed, declared, and contained,
before the same trusts shall have been fully
performed and discharged, then and so often
as the same shall happen, it shall and may be
lawful to and for the said Adam Ash and
Celia Brown, during their joint lives, and
after the decease of either of them, then to
and for the survivor of them, during his or
her life, by any deed or writing under their,
his, or her hands and seals, or hand and seal,
to nominate, substitute, and appoint any
other person or persons to be a trustee
or trustees in the place and stead of such
trustees or trustee so dying, desiring to be
discharged, or refusing or becoming incapa-
ble to act as aforesaid; and when and so
often as any such new trustees or trustee shall
be nominated and appointed as aforesaid, all
the said trust estate and premises, the trustee
or trustees whereof shall so die, desire to
be discharged, or refuse or become inca-
pable to act as aforesaid, shall be thereupon
with all convenient speed conveyed, trans-
ferred, assigned, and assured respectively,
(according to the nature and tenure thereof)
in such sort and manner, and so as, that the

same shall and may be legally and effectually vested in the newly appointed trustee or trustees jointly with such of the former trustees, as shall be willing and capable to act; or in case there shall be no continuing former trustee, then in such newly appointed trustee or trustees only; To the uses, upon the several trusts, and to and for the several intents and purposes hereinbefore created, expressed, declared and contained of and concerning the same; and that every such new trustee or trustees shall and may in all things, and in all respects, act and assist in the management, carrying on, and executing of the trusts, to which he or they shall be so appointed, as fully and effectually, and with the same power and powers, authority and authorities, as if such new trustee or trustees had been originally by these presents nominated and appointed, and as the said trustees of the same trust estates and premises named in these presents are, or would be enabled to do, or might or could have done, under or by virtue of the same, or any clause, power, or proviso hereinbefore contained or implied; or otherwise as if such original trustees had been then living, or continuing
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to act under or in execution of the trusts, powers, and authorities reposed in, or reserved to, them in and by these presents.

Provided also, and it is hereby further agreed and declared between and by the said parties hereto, that the said several trustees in and by these presents nominated and appointed, and hereafter to be nominated and appointed by virtue of the said last mentioned power, and each and every of them, their and each and every of their heirs, executors, administrators, and assigns, shall be charged and chargeable only for so much money, as they and every of them shall respectively actually receive by virtue of or under the trusts aforesaid; and that any one or more of them shall not be answerable for the other or others of them, nor for the acts, receipts, neglects, or defaults of the other or others of them; but each of them for his own acts, receipts, neglects and defaults only: nor shall they, or any of them, be answerable or accountable for any person or persons, who is, are, or shall be the receiver or receivers of the rents and profits of the said hereditaments and premises, or any of them, or any part thereof, or in whose hands the

Clauses of indemnity to the trustees.

same, or any of the aforesaid trust monies, shall or may be deposited or lodged for safe custody; nor for the insufficiency or deficiency of title in any manors, lands, or hereditaments, which may be had or received by way of exchange for or in lieu of all or any part of the messuages, lands, tenements, and hereditaments hereby made saleable and exchangeable as aforesaid, or which may be purchased with the money to arise by sale thereof, in case the same shall be sold as aforesaid; nor for the insufficiency of any security or securities, in or upon which the monies to arise by such sale or sales, or to be received for equality of exchange, or any part thereof, shall or may be placed out or invested as aforesaid; nor for any misfortune, loss, or damage, which may happen in the execution of any of the aforesaid trusts, or in relation thereto, except the same shall happen by or through their own wilful neglects or defaults respectively; and also that the said several trustees, and each and every of them, their and each and every of their heirs, executors, administrators, and assigns, shall and may, by and out of the monies, which shall come to their respective hands by virtue of the trusts aforesaid, retain to, and reimburse themselves

themselves respectively, and also allow to their and his co-trustee and co-trustees, all loss, costs, damages, and expences, which he or they or any of them shall or may respectively suffer, sustain, expend, disburse, be at, or be put unto, or which shall or may be to him, them, or any of them occasioned, for or on account, or by reason or means of, the trusts hereby in them reposed, or the management and execution thereof, or otherwise howsoever relating thereto (the allowance of which costs shall be regulated by the methods practised between solicitor and client, and not as between party and party).

And the said Adam Ash, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said Cornelius Crosby and Charles Crompton, their heirs and assigns, in manner and form following; (that is to say) That (for and notwithstanding any act, deed, matter, or thing whatsoever made, done, committed, executed, or suffered by him the said Adam Ash, or any of his ancestors, to the contrary) he the said Adam Ash, now

Usual covenants
for the title.

at the time of the sealing and delivery of these presents, is and stands lawfully, rightfully, and absolutely seised of, or otherwise well and sufficiently entitled to the said messuages or tenements, lands, hereditaments and premises hereby granted and released, or intended so to be, and of and to every of them, and every part and parcel thereof, with their and every of their rights, members and appurtenances, of a good, sure, perfect, lawful, absolute and indefeazible estate of inheritance in fee simple; without any manner of condition, trust, power of revocation, or limitation of any new or other use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, determine, lessen, incumber, revoke or make void the same: And also, that he the said Adam Ash, (for and notwithstanding any such act, matter or thing as aforesaid) now at the time of the execution of these presents, hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release and convey the messuages, lands, tenements, hereditaments and premises hereby granted and released, or intended so to be, and every of them,

them, and every part and parcel thereof, with their and every of their rights, members and appurtenances unto the said Cornelius Crosby and Charles Crompton, their heirs and assigns, to the uses, and upon and for the trusts, intents and purposes, and in manner and form aforesaid, according to the true intent and meaning of these presents: And likewise, that the messuages, lands, tenements, hereditaments and premises hereby granted and released, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members and appurtenances shall and lawfully may from time to time, and at all times hereafter, remain, continue, and be, to the several uses, upon the several trusts, and for the several intents and purposes hereinbefore created, expressed and declared of and concerning the same, and shall and may be peaceably and quietly had, held, and enjoyed accordingly, without the let, suit, trouble, denial, eviction, ejection, disturbance, molestation, hindrance, interruption, claim, or demand whatsoever of, from, or by the said Adam Ash, or his heirs, or any person or persons claiming, or

to claim, by, from, through, under, or in trust for him, them, or any of them, or any of his ancestors; and that free and clear, and freely, clearly, and absolutely acquitted, exonerated and discharged, or otherwise by him the said Adam Ash, his heirs, executors, and administrators, or some or one of them, well and sufficiently saved, defended, kept harmless and indemnified of, from, and against all former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, intails, trusts, wills, statutes merchant and of the staple, recognizances, judgments, extents, executions, rents, arrears of rent, annuities, legacies, sum and sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all and singular other titles, troubles, charges, debts, and incumbrances whatsoever (save and except, &c.): And moreover, that he the said Adam Ash, and his heirs, and all and every other person or persons having, or lawfully claiming, or who shall or may at any time or times hereafter

after have, or lawfully claim any estate, right, title, interest, inheritance, property, claim or demand whatsoever, either at law or in equity, of, in, to, or out of the messuages, lands, tenements, hereditaments and premises hereby granted and released, or intended so to be, or of, in, to, or out of any of them, or any part or parcel thereof, by, from, under, or in trust for him or them, or any of them, or from, through, or under any of his ancestors, shall and will, from time to time and at all times hereafter, upon every reasonable request of the said Cornelius Crosby and Charles Crompton, their heirs or assigns, but at the proper costs and charges in the law of the said Adam Ash, his heirs, executors, or administrators, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered and executed all and every such further and other lawful and reasonable act and acts, thing and things, deed and deeds, devices, conveyances and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, releasing, and assuring the messuages, lands, tenements, hereditaments and premises hereby granted and released, or intended

ed

ed so to be, and every of them, and every part and parcel thereof, with their and every every of their rights, members, and appurtenances, unto the said Cornelius Crosby and Charles Crompton, their heirs and assigns, to the several uses, upon the several trusts, and for the several intents and purposes, and under and subject to the several powers, provisoes, declarations, and agreements hereinbefore created, expressed, declared, and contained of and concerning the same, or such of them as shall then remain to be performed, or capable of taking effect; be the same by fine, feoffment, common recovery or recoveries, or other matter of record, or not of record, or otherwise howsoever; as by them the said Cornelius Crosby and Charles Crompton, or the survivor of them, his heirs or assigns, or any of them, their or any of their counsel in the law, shall be reasonably devised, or advised, and required; so as, that such further assurance, or assurances, contain or imply in them no further or other covenant or warranty, than against the person or persons, who shall make and execute the same, his, her, or their heirs, executors and administrators, acts and deeds only; and so as, that the party or parties,
who

who shall be required to make and execute any such further assurance or assurances, be not compelled, nor compellable for the making or doing thereof, to go or travel from his, her, or their dwelling, or respective dwellings, or usual place or places of abode. In witness, &c.

APPOINTMENT.

To a Purchaser in Fee.

THIS Indenture of three parts made
the day of in the
year of the reign of our sovereign Lord
George the Third, by the grace of God, of
Great Britain, France, and Ireland, king, de-
fender of the faith, and so forth, and in the year
of our Lord Christ one thousand seven hun-
dred and ninety-six: Between Michael Munn
of of the first part, Nathan Nore
of of the second part, and
Peter Penny of of the third
part; ~~Whereas~~ by indentures of lease and
release, bearing date respectively the
and days of January now last past,
the release being made, or expressed to be
made, between Charles Church of
of the first part, the said Michael Munn of
the second part, and the said Nathan Nore
of the third part; the messuages or tenements,
piece or parcel of ground, and hereditaments
hereinafter mentioned and described, and
granted and released, or intended so to be,
were

Parties.

Recital of a lease
and release.

were conveyed and assured, and now are and stand limited, To the use of such person or persons, for such estate or estates, interest and interests, and to and for such intents and purposes, and in such manner and form as he the said Michael Munn by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, or any codicil thereto, to be signed, sealed, and published by him in the presence of, and attested by, three or more credible witnesses, shall direct, limit, or appoint; and in default of, and until such direction, limitation, or appointment, To the use of the said Michael Munn and Nathan Nore, and the heirs and assigns of the said Nathan Nore for ever; In Trust nevertheless, as to the estate and interest thereby limited in use to the said Nathan Nore, his heirs and assigns, for, and for the only benefit of, the said Michael Munn, his heirs and assigns for ever; and to be conveyed and disposed of from time to time, as he the said Michael Munn, his heirs or assigns shall direct or appoint; and to, for, or upon no other use, trust, intent, or purpose whatsoever.

To such uses as
the vendor shall
appoint.

The contract.

soever. And wherreas the said Peter Penny hath contracted and agreed with the said Michael Munn for the absolute purchase of the messuages or tenements, piece or parcel of ground and hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released, and the inheritance thereof in fee simple, discharged of all incumbrances, at or for the price or sum of three hundred pounds: *Now this Indenture Witnesseth*, that for and in consideration of the sum of three hundred pounds of lawful money of Great Britain to the said Michael Munn in hand paid by the said Peter Penny, at or before the sealing and delivery of these presents, the receipt whereof he the said Michael Munn doth hereby acknowledge, and thereof, and of and from the same and every part thereof doth acquit, release, and discharge the said Peter Penny, his heirs, executors, administrators, and assigns, and every of them, for ever by these presents; and also for and in consideration of the sum of five shillings of like lawful money at the same time to the said Nathan Nore also paid by the said Peter Penny, the receipt whereof is hereby also acknowledged; he the said Michael Munn pursuant
to,

to, and in exercise and execution of, the said power and authority given and reserved to him in and by the said recited indenture of release, and by force and virtue thereof, and of all and every other power and powers, and authority and authorities to him in that behalf reserved, or in him vested, or him in anywise thereunto enabling, hath directed, limited, and appointed, and granted, bargained, sold, aliened, released, and confirmed; and by this deed in writing under his hand and seal, and by him duly signed, sealed, and delivered in the presence of, and attested by, the two credible persons, whose names are intended to be hereupon indorsed as witnesses thereto, Doth absolutely and irrevocably direct, limit, and appoint, and grant, bargain, sell, alien, release, and confirm; and the said Nathan Nore at the request, and by the direction of the said Michael Munn (testified by his being a party to, and sealing and delivering these presents), Hath bargained, sold, aliened, and released, and by these presents Doth bargain, sell, alien, and release unto the said Peter Penny (in his actual possession now being by virtue of a bargain and sale to him thereof made by the said Michael Munn and Nathan Nore, in consideration of
five

The Appointment.

five shillings, by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession) and to his heirs and assigns, all that piece or parcel of ground, &c.; together with all houses, outhouses, offices, yards, ways, waters, watercourses, lights, easements, privileges, profits, commodities, advantages, emoluments, hereditaments, rights, members, and appurtenances whatsoever, to the said piece or parcel of ground, messuages or tenements and hereditaments belonging, or in anywise appertaining, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof; and the reversion and reversions, remainder and remainders, and yearly and other rents, issues, and profits of all and singular the premises; and also all the estate, right, title, interest, use, trust, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, of them the said Michael Munn and Nathan Nore, of, in, to, or out of the said piece or parcel of ground, messuages or tenements,

ments, hereditaments, and premises, hereby granted and released, or intended so to be, and every or any part thereof; together with all deeds, evidences, and writings relating to, or concerning the premises hereby granted and released, or intended so to be, or any of them, or any part thereof, now in the custody or power of them the said Michael Munn and Nathan Nore, or either of them, or which they or either of them can obtain or procure without suit at law or in equity: To Have and To Hold the said piece or parcel of ground, messuages or tenements, hereditaments, and all and singular other the premises hereby directed, limited, and appointed, and granted and released, or intended so to be, and every part thereof, with the appurtenances, unto the said Peter Penny, his heirs and assigns for ever, to the only proper use and behoof of the said Peter Penny, his heirs and assigns for ever; and to or for no other use, trust, intent, or purpose whatsoever: and the said Nathan Nore, for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said Peter Penny, his heirs and assigns, that he the said Nathan Nore hath not at any time heretofore made, done, executed,

Title deeds.

Habeendum.

The trustee covenants against his own acts.

Covenants for
the title.

cuted, committed, or willingly, or knowingly suffered, any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the piece or parcel of ground, messuages or tenements, hereditaments, and premises hereby limited and appointed, granted and released, or intended so to be, or any part thereof, is, are, or can, shall, or may be impeached, charged, incumbered, or in anywise affected in title, charge, estate, or otherwise howsoever: And the said Michael Munn, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Peter Penny, his heirs and assigns, in manner following; (that is to say) That (for and notwithstanding any act, deed, matter or thing whatsoever made, done, executed, committed, occasioned or suffered by him the said Michael Munn, or the said Nathan Nore, to the contrary) they the said Michael Munn and Nathan Nore are, or one of them is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of, or well and sufficiently entitled to, the piece or parcel of ground, messuages or tenements, hereditaments and premises hereby limited and appointed, granted and released,
or

or intended so to be, with the appurtenances, of and in a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance in fee simple ; without any manner of condition, contingent proviso, power of revocation, or limitation of any new, or other use or uses, or any other matter, restraint, cause, or thing whatsoever to alter, change, charge, revoke, make void, lessen, incumber, or determine the same ; and that (for and notwithstanding any such act, matter, or thing as aforesaid) they the said Michael Munn and Nathan Nore, or one of them, now have or hath, in themselves or himself, good right, full power, and lawful and absolute authority to convey and assure the piece or parcel of ground, messuages or tenements, hereditaments and premises hereby limited, appointed, granted, and released, or intended so to be, and every part thereof, with the appurtenances, unto, and to the use of, the said Peter Penny, his heirs and assigns, in manner aforesaid ; and also, that the said piece or parcel of ground, messuages or tenements, hereditaments and premises, and every part thereof, with the appurtenances, shall from time to time, and at all times hereafter, remain, continue, and be unto, and to

the use of, the said Peter Penny, his heirs and assigns, and shall and may be peaceably and quietly had, held, and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, received and taken accordingly; without any let, suit, trouble, denial, eviction, ejection, interruption, or disturbance of, from, or by the said Michael Munn, or his heirs, or by the said Nathan Nore, or his heirs, or by any other person or persons, lawfully or equitably claiming, or to claim, by, from, through, under, or in trust for them, or any of them; and that free and clear, and freely and clearly, acquitted, exonerated, and discharged, or otherwise by him the said Michael Munn, his heirs, executors, and administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, and all right and title of dower, uses, trusts, wills, intails, statutes merchant and of the staple, recognizances, judgments, extents, executions, annuities, legacies, payments, rent, and arrears of rent, forfeitures, re-entries, cause and causes of forfeiture, and re-entry, and of, from, and against all and singular

ſingular other eſtates, titles, troubles, charges, and incumbrances whatſoever had, made, done, executed, committed, occaſioned, or ſuffered by them the ſaid Michael Munn and Nathan Nore, or either of them, or by any other perſon or perſons lawfully or equitably claiming or to claim, by, from, through, under, or in truſt for them, or either of them; and moreover, that he the ſaid Michael Munn and his heirs, and all and every other perſon and perſons having, or lawfully or equitably claiming, or who ſhall or may have, or lawfully or equitably claim, any eſtate, right, title, truſt, or intereſt of, in, to, or out of the ſaid ſaid piece or parcel of ground, meſſuages, or tenements, hereditaments, and premiſes, or any part thereof, by, from, through, under, or in truſt for him or them, ſhall and will from time to time, and at all or any time or times hereafter, upon every reaſonable requeſt, and at the proper coſts and charges in the law of the ſaid Peter Penny, his heirs or aſſigns, make, do, acknowledge, levy, ſuffer, and execute, or cauſe and procure to be made, done, acknowledged, levied, ſuffered, and executed, all and every ſuch further and other lawful and reaſonable acts, deeds, and things, de-

vices, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely granting, releasing, conveying, assuring, and confirming the said piece or parcel of ground, messuages or tenements, hereditaments, and premises, and every part thereof, with the appurtenances, unto, and to the use of, the said Peter Penny, his heirs and assigns for ever ; or otherwise as he the said Peter Penny, his heirs or assigns shall direct or appoint; be the same by fine, feoffment, common recovery, deed inrolled, or not inrolled, or any other matter of record, or not of record, or otherwise howsoever ; as by the said Peter Penny, his heirs and assigns, or any of them, or their or any of their counsel in the law, shall be reasonably devised or advised, and required ; so as, that such further assurance or assurances contain or imply no further or other warranty or covenant than against the person or persons, who shall make and execute the same, and his, her, or their respective heirs, executors, and administrators, acts and deeds only ; and so as, that the person or persons, who shall be required to make and execute any such further assurance or assurances, be not compelled, nor

compellable, for the making or doing thereof, to go or travel from his, her, or their dwelling or respective dwellings, or usual place or places of residence or abode. In witness, &c.

A P P O I N T M E N T.

**Settlement before Marriage under a Power
of Appointment.**

Parties.

THIS Indenture, &c. between Francis Frederick of, &c. of the first part, William Frederick of, &c. (the eldest son of the said Francis Frederick) of the second part, Grace Griffith of, &c. spinster, of the third part, Henry Howard of, &c., and Henry Hunt of, &c. of the fourth part, John Jones of, &c. and James Impey of, &c. of the fifth part, and Launcelot Lyon of, &c. and Luke Lucas of, &c. of the sixth part.

**Indentures of
lease and re-
lease recited.**

Whereas, under and by virtue of certain indentures of lease and release, bearing date respectively the days of the release being of four parts, and made or expressed to be made between the said Francis Frederick of the first part, the said William Frederick of the second part, James Allen of, &c. of

of the third part, and William Andrews of, &c. of the fourth part, and also by virtue of a common recovery, duly suffered in pursuance of an agreement in the said indenture of release contained; all that the manor of _____ in the county of _____ with the rights, members, and appurtenances, and all that capital messuage, or mansion house, &c. &c., are and were, and now stand, settled, limited, and assured To the use of such person or persons, for such estate or estates, interests, ends, intents, and purposes, and with, under, and subject to such powers, provisoes, limitations, declarations, and agreements, and in such sort, manner, and form, as the said Francis Frederick and William Frederick from time to time, or at any time or times, by any deed or deeds, writing or writings, under their hands and seals, and attested by two or more credible witnesses, shall jointly direct, limit, or appoint; and in default of such joint direction, limitation, or appointment, to such uses as are therein mentioned of and concerning the same premises.

And whereas a marriage is intended to be shortly had and solemnized between the said
William

The intended
marriage;

and the agree-
ment for a settle-
ment.

William Frederick and Grace Griffith; and upon the treaty for, and in consideration of, the said intended marriage, and for making such provision and settlement upon and for the said Grace Griffith, and the issue of the said intended marriage as hereinafter mentioned, the said Francis Frederick and William Frederick did propose and agree, that the said manor, messuages, lands, advowson, tenements, hereditaments, and premises hereinbefore mentioned, with the appurtenances, should be forthwith limited, settled, and assured to, for, and upon the uses, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinafter mentioned and declared.

The appoint-
ment.

Now this Indenture Witnesseth, That in pursuance of the said recited proposal and agreement, and for the intents and purposes aforesaid, and in consideration of the said intended marriage between the said William Frederick and Grace Griffith, they the said Francis Frederick and William Frederick, pursuant to, and in execution of, the power or authority to them in that behalf given, limited, or reserved in and by the said

saïd indenture of release of the day
of as aforesaid, and by force and
virtue thereof, and of all and every other
power and powers, authority and authorities
to them belonging, in them vested, or them
in anywise enabling in this behalf, Do by this
deed, or writing, under their hands and seals,
and attested by the two credible persons,
whose names are intended to be hereon in-
dorsed, as witnesses to the signing, sealing,
and delivery of these presents by the saïd
Francis Frederick and William Frederick,
direct, limit and appoint, that all and every
the saïd manor, messuages, lands, tenements
advowson, hereditaments and premises in
the saïd indentures of lease and release of the
 and days of and hereinbefore par-
ticularly mentioned and described, with their,
and every of their rights, members, and ap-
purtenances, shall henceforth remain, con-
tinue and be, and that the saïd indenture of
release of the day of and
the saïd common recovery thereupon suffer-
ed, and the full force and effect of the same,
and every of them, shall operate, be and
enure, and that the saïd William Andrews
(the demandant in the saïd recovery named)
and his heirs, shall stand and be seised of
the

Appointment.

the said manor, messuages, lands, tenements, advowson, hereditaments, and premises, and every of them, and every part and parcel thereof, To such uses, upon such trusts, for such intents and purposes, and under and subject to such powers, provisoes, declarations, and agreements as are hereinafter mentioned, expressed, and declared of and concerning the same.

The grant and
release.

And this indenture further witnesseth, That in further pursuance of the said recited agreement, and in consideration of the premises, and also in consideration of the sum of five shillings of lawful money of Great Britain by the said Henry Howard and Henry Hunt in hand paid to the said Francis Frederick and William Frederick, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged); They the said Francis Frederick and William Frederick have, and each of them hath granted, bargained, sold, released, and confirmed, and by these presents do, and each of them doth grant, bargain, sell, release, and confirm unto the said Henry Howard and Henry Hunt (in their actual possession now being by virtue of a bargain

bargain and sale to them thereof made by the said Francis Frederick and William Frederick, in consideration of five shillings, by indenture bearing date the day next before the day of the date hereof, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession) and to their heirs, all and every the said manor, messuages, lands, tenements, advowson, hereditaments, and premises in the said indenture of the day of

and hereinbefore mentioned and described; with their and every of their rights, members, and appurtenances; and the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part and parcel thereof; and all the estate, right, title, trust, property, claim, and demand whatsoever of them the said Francis Frederick and William Frederick, and each of them, of, in, to, or out of the same premises, and of every of them, and every or any part or parcel thereof.

To Have and To Hold the said manor, *Habendum.*
messuages, lands, tenements, advowson, hereditaments,

reditaments, and all and singular other the premises hereby intended to be granted and released; with their and every of their rights, members, and appurtenances, unto the said Henry Howard and Henry Hunt, their heirs and assigns for ever; To such uses nevertheless, upon and for such trusts, intents, and purposes, and under and subject to such powers, provisoes, declarations, and agreements as are hereinafter mentioned, expressed, and declared of and concerning the same; (that is to say)

*Until marriage,
to the uses pre-
viously existing.*

Until the said intended marriage shall take effect, To such and the same uses, upon and for such and the same trusts, intents, and purposes, and under and subject to such and the same powers, provisoes, declarations, and limitations, as the said manor, messuages, lands, tenements, advowson, hereditaments, and premises, at the time of, or immediately before, the execution of these presents, are or stand limited, settled, and assured; and from and after the solemnization of the said intended marriage, then to such uses, upon such trusts, for such intents and purposes, and under and subject to such powers, provisoes, declarations, limitations, and agreements, as
are

*After the mar-
riage, to the
uses following.*

are hereinafter mentioned, expressed, and declared of and concerning the same ; (that is to say),

To the use, intent, and purpose, That the said William Frederick and his assigns shall and may, during the joint lives of himself and the said Francis Frederick, by and out of the said manor, messuages, lands, tenements, hereditaments and premises, have, receive, and take the yearly rent, or annual sum of £ of lawful money of Great Britain, free and clear of and from all taxes, charges, and deductions whatsoever, parliamentary or otherwise ; the said yearly rent or sum of £ to be paid and payable to him the said William Frederick and his assigns, during the joint lives of himself and the said Francis Frederick, at or in the common dining-hall of Lincoln's Inn, in the said county of Middlesex, on the four most usual feasts or days of payment of rent in the year ; (that is to say) the twenty-fifth day of December, the twenty-fifth day of March, the twenty-fourth day of June, and the twenty-ninth day of September, in every year, by even and equal portions ; the first payment thereof to begin and be made on
such

To the intent, that the intended husband may receive a rent-charge during the joint lives of himself and his father.

such of the same days of payment, as shall first happen after the solemnization of the said intended marriage :

And to the intent, that the wife may receive a rent-charge for her life, in bar of dower, in case she shall survive her husband.

And to this further use, intent, and purpose, that the said Grace Griffith (in case she shall survive the said William Frederick, her intended husband), and her assigns, shall and may, from and after the decease of the said William Frederick, yearly have, receive, take, and enjoy, for and during the term of her natural life, by and out of the said manor, messuages, lands, tenements, hereditaments, and premises, one annual sum, or yearly rent charge, of £ of lawful money of Great Britain, free and clear of and from all taxes, charges, and deductions as aforesaid; such yearly rent charge, or sum of £ to be in full for the jointure of the said Grace Griffith, and in lieu, bar, and satisfaction of and for her whole dower or thirds, at common law, or by or on account of custom, or free bench, which she can or may, or otherwise might have, or claim, of, in, or out of all and every, or any of the freehold, copyhold, or customary manors, messuages, lands, tenements, and hereditaments, whereof or

whereunto

whereunto the said William Frederick now is, or at any time or times during the said intended coverture shall be seised or entitled, for any estate of freehold, or copyhold, of inheritance, or to which dower or free bench is incident; and to be paid to the said Grace Griffith, or her assigns, at or in the common dining-hall of Lincoln's Inn in the county of Middlesex, on the said four most usual feasts, or days of payment of rent in the year hereinbefore mentioned; the first quarterly payment thereof to begin and be made on such of the said days, as shall first happen after the decease of the said William Frederick.

And to and for this further use, intent, and purpose, that in case any quarterly payment of either of the said annual sums, or yearly rents charge, of £ and £ so payable respectively for the time being as aforesaid, or any part thereof, shall at any time or times be in arrear or unpaid by the space of fourteen days next over or after any or either of the said days, whereon the same ought respectively to be paid as aforesaid; then, and so often as the same shall happen, it shall and may be lawful to and for the person or persons for the time being entitled

Power of distraining.

to the yearly rent or sum, the quarterly payment whereof shall be so in arrear as aforesaid, into and upon the said manor, messuages, lands, tenements, hereditaments, and premises so charged with, and made liable to, the payment of the said yearly rent so behind and unpaid as aforesaid, and into and upon every, or any part or parcel thereof, to enter and distrain; and the distress and distresses, then and there found, to take, lead, drive, carry away, and impound, and in pound to detain and keep until the said annual sum, or yearly rent charge, so behind and unpaid; and all arrears thereof, together with all costs, charges, and expences occasioned and incurred by taking and keeping such distress and distresses, shall be fully paid and satisfied; and in default of payment thereof, or of any part thereof respectively, in due time after such distress or distresses shall be taken, to appraise, sell, and dispose of, or cause to be appraised, sold, and disposed of, such distress or distresses, or otherwise to act therein according to the due course of law, and in like manner as in cases of distress taken for non-payment of rent reserved upon common leases; to the intent, that thereby and therewith, or otherwise, the yearly

yearly sum or annual rent-charge so behind and unpaid as aforesaid, and all arrears thereof, and all costs, charges, and expences attending the non-payment and recovery of the same, shall and may be fully paid and satisfied.

And also to and for this further use, intent, and purpose, that in case any quarterly payment of either of the said annual sums or yearly rents-charge of £ and £ or any part thereof, shall at any time or times be in arrear or unpaid, by the space of twenty-eight days next after any or either of the said days hereinbefore mentioned and appointed for payment thereof; then, and so often as the same shall happen (although no formal or legal demand shall be made), it shall and may be lawful to and for the person or persons for the time being entitled to the annual sum or yearly rent, the quarterly payment whereof shall be so in arrear, into and upon all and singular the said manor, messuages, lands, tenements, hereditaments, and premises, or into and upon any part thereof in the name of the whole, to enter, and the same to have, hold, occupy, possess, and enjoy, and the rents, issues,

Power of entry.

Appointment.

issues, and profits thereof, and of every part thereof, to have, receive, and take to and for his, her, or their own use and benefit, until he, she, or they shall thereby and therewith, or by any other ways, be fully paid and satisfied the said annual sum or rent-charge so behind and unpaid, and all arrears thereof, and all such arrears of the same as shall grow due or incur during the time that he, she, or they shall, by virtue of such entry or entries, be in possession of the premises, or any part thereof; together with all costs, charges, and expences whatsoever attending, or occasioned by, the non-payment, or recovery of the same, or any part thereof, or in relation thereto; such possession, when taken, to be without impeachment of waste.

And subject to the aforesaid rents-charge and powers, to the use of trustees for two hundred years.

And as, to, for, and concerning the said manor, messuages, lands, tenements, hereditaments, and premises hereby granted and released, or intended so to be, from and immediately after the solemnization of the said intended marriage, subject to, and charged and chargeable with, the said annual sums or yearly rents-charge of £ and £ or such of them, as, according to events, shall be payable for the time being as aforesaid, and

and to the remedies and powers hereinbefore given and provided for securing the same respectively,

To the use and behoof of the said John Jones and James Impey, their executors, administrators, and assigns, for and during, and unto the full end and term of two hundred years thence next ensuing, and fully to be complete and ended, without impeachment of waste ; upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the provisos, declarations, and agreements hereinafter mentioned, expressed, and declared of and concerning the same term ; and from and immediately after the end, expiration, or other sooner determination of the said term of two hundred years, and in the mean time subject thereto, and to the trusts thereof,

To the use of the said Francis Frederick and his assigns, for and during the term of his natural life, without impeachment of, or for any manner of waste ; and from and after the determination of that estate by forfeiture, or otherwise,

Remainder to
the use of the
father for life ;

Q 3

To

Remainder to
the use of trust-
tees, to preserve
contingent re-
mainders ;

To the use of the said Henry Howard and Henry Hunt and their heirs, during the life of the said Francis Frederick, in trust to support and preserve the contingent uses and estates hereinafter limited from being defeated, or destroyed ; and for that purpose to make entries and bring actions, as occasion may require ; but nevertheless to permit and suffer the said Francis Frederick and his assigns, during his life, to receive and take the rents, issues, and profits of the said manor, messuages, advowson, lands, tenements, hereditaments, and premises, to and for his and their own use and benefit ; and from and immediately after his decease,

Remainder to
the use of the
intended hus-
band for life ;

To the use of the said William Frederick and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste ; and from and after the determination of that estate by forfeiture or otherwise,

Remainder to
the use of trust-
tees, to preserve
contingent re-
mainders ;

To the use of the said Henry Howard and Henry Hunt and their heirs, during the life of the said William Frederick, in
trust

trust to preserve and support the contingent uses and estates hereinafter limited from being defeated, or destroyed; and for that purpose to make entries and bring actions, as occasion may require; but nevertheless to permit and suffer the said William Frederick and his assigns, during his life, to receive and take the rents, issues, and profits of the said manor, messuages, advowson, lands, tenements, hereditaments, and premises, to and for his and their own use and benefit; and from and immediately after the several deceases of the said Francis Frederick and William Frederick, and the decease of the survivor of them,

To the use of the said Launcelot Lyon and Luke Lucas, their executors, administrators, and assigns, for and during, and unto the full end and term of five hundred years thence next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste; upon the several trusts nevertheless, and to and for the several intents and purposes, and subject to the several provisoes, declarations, and agreements hereinafter expressed and de-

Remainder to
the use of trustees for five
hundred years; .

clared of and concerning the same term ;
and from and after the end, expiration, or
other sooner determination of the said term
of five hundred years, and in the mean time
subject thereto, and to the trusts thereof,

Remainder to
the use of the
first son of the
intended mar-
riage in tail
male ;

To the use of the first son of the body of
the said William Frederick on the body of
the said Grace Griffith, his intended wife,
lawfully to be begotten, and the heirs male
of the body of such first son lawfully issuing ;
and for default of such issue,

Remainder to
the use of the
second and other
sons of the mar-
riage in tail
male ;

To the use of the second, third, fourth,
fifth, sixth, and all and every other the son
and sons of the body of the said William
Frederick on the body of the said Grace
Griffith, his intended wife, to be begotten,
severally, successively, and in remainder,
one after another, as they, and every of
them, shall be in seniority of age and prio-
rity of birth, and of the several and respec-
tive heirs male of the body and bodies of
all and every such son and sons lawfully issu-
ing ; the elder of such sons, and the heirs
male of his body issuing, being always to be
preferred, and to take before, the younger of
such

such son and sons, and the heirs male of his and their body and respective bodies issuing; and for default of such issue,

To the use of the first son of the body of the said William Frederick on the body of any other wife to be begotten, and the heirs male of the body of such first son lawfully issuing; and for default of such issue,

Remainder to the use of the first son by any other wife, in tail male.

To the use of the second, third, fourth, fifth, sixth, and all and every other the son and sons of the said William Frederick on the body of any such other wife or wives to be begotten, severally, successively, and in remainder, one after another, as they, and every of them, shall be in seniority of age and priority of birth, and of the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing; the elder of such sons, and the heirs male of his body issuing, being always to be preferred, and to take before, the younger of such sons, and the heirs male of his and their body and respective bodies issuing; and for default of such issue,

Remainder to the use of the second and other sons by any other wife, in tail male.

To the use of all and every the daughter and daughters of the said William Frederick

on

Remainder to the use of the daughters of the intended marriage, as tenants in common, in tail general.

cross remainders
between them.

on the body of the said Grace Griffith, his intended wife, to be begotten, equally to be divided amongst them, share and share alike, as tenants in common, and not as joint tenants, and of the several and respective heirs of the body and bodies of all and every such daughter and daughters lawfully issuing; and in case there shall be a failure of issue of any one or more of such daughters, then as well as to the original share or shares of, as the share or shares surviving or accruing to, such last mentioned daughter or daughters, or her or their issue, to the use of all and every other the daughter and daughters of the said William Frederick on the body of the said Grace Griffith to be begotten, to be divided between them, if more than one, share and share alike, as tenants in common, and not as joint tenants, and of the several and respective heirs of their bodies issuing; and in case all such daughters, but one, shall happen to die without issue, or if there shall be but one such daughter, then to the use of such surviving or only daughter, and the heirs of her body lawfully issuing; and for default of such issue,

To

To the use of all and every the daughter and daughters of the said William Frederick on the body of any other wife or wives to be begotten, equally to be divided amongst them, share and share alike, as tenants in common, and not as joint tenants, and of the several and respective heirs of the body and bodies of all and every such daughter and daughters lawfully issuing; and in case there shall be a failure of issue of any one or more of such daughters, then as well as to the original share or shares of, as to the share or shares surviving or accruing to, such last mentioned daughter or daughters, or her or their issue, to the use of all and every other the daughter and daughters of the said William Frederick, on the body of any such other wife or wives to be begotten, to be divided between them, if more than one, share and share alike, as tenants in common, and not as joint tenants, and of the several and respective heirs of their bodies issuing; and in case all such daughters, but one, shall happen to die without issue, or if there shall be but one such daughter, then to the use of such surviving or only daughter, and of the heirs of her body lawfully issuing; and for default of such issue,

To

Remainder to the use of the daughters by any other marriage in like manner.

To the use of the said Francis Frederick,
his heirs and assigns for ever.

Trusts declared
of the term of
200 years ;

And as to, for, and concerning the said term of two hundred years hereinbefore limited in use to the said John Jones and James Impey, their executors, administrators, and assigns as aforesaid, it is hereby agreed and declared, that the same is so limited to them upon the trusts, for the intents and purposes, and under and subject to the provisos, declarations, and agreements hereinafter mentioned, expressed and declared of and concerning the same ; (that is to say),

in trust in the
first place for
further securing
the two rents-
charge.

Upon trust, in case, and so often as, any quarterly payment or payments of the said yearly rents charge or annual sums of £. and £. so payable respectively for the time being as aforesaid, or either of them, or any part thereof, shall be behind and unpaid by the space of forty days next over, or after, any or either of the said days hereinbefore appointed for payment of the same respectively (although no formal or legal demand shall be made) ; then, and so often as the same shall happen, that they the said John Jones and James Impey,

Impey, or the survivor of them, his executors, administrators or assigns, shall and do from time to time, by and out of the rents, issues, and profits of the manor, messuages, lands, tenements, hereditaments, and premises comprised in the same term of two hundred years, or by demise, leasing, selling, or mortgaging the same premises, or any of them, or any part thereof, for all, or any part of, the same term, or by bringing actions against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear, or by such other ways and means, as to them or him shall seem meet, raise and levy such sum and sums of money, as shall be sufficient from time to time to pay and satisfy such arrears of the said yearly rents-charge or sums of £. and £. or either of them, or so much thereof, as shall from time to time happen to be in arrear and unpaid; together with all loss, costs, charges, damages, and expences, which the said John Jones and James Impey, or the survivor of them, his executors, administrators, or assigns, and the person or persons for the time being respectively entitled to such arrears as aforesaid, or any of them, shall sustain, expend, or be put unto, for or by

by reason of the non-payment of the same yearly rents-charge, or sums of £. and £. or either of them, or any part thereof, at the days and times, and in manner before appointed for the payment thereof respectively; and shall and do pay, apply and dispose of the same monies accordingly.

And in trust, in case the intended husband shall die in his father's lifetime, to raise money for the maintenance of the children of the marriage.

And upon further trust, in case the said William Frederick shall die in the lifetime of the said Francis Frederick, and there shall be one or more child or children of the said William Frederick, on the body of the said Grace Griffith to be begotten, born in his lifetime, or in due time after his decease, then, and in such case, that the said John Jones and James Impey, or the survivor of them, his executors, administrators or assigns, shall and do, during the life of the said Francis Frederick (subject and without prejudice to the raising and paying the said yearly rent-charge or sum of £. and the remedies and powers for recovering the same as aforesaid) by and out of the rents, issues, and profits of the manor, messuages, advowson, lands, tenements, hereditaments, and premisses comprised in the said term of

two hundred years, levy and raise for the maintenance, support, and education of such child or children, the yearly sum or sums of money hereinafter mentioned; (that is to say), in case there shall be but one such child, then the yearly sum of one hundred pounds; and in case there shall be two such children, and no more, then the yearly sum of one hundred and fifty pounds, to be equally divided between them, share and share alike; and in case there shall be three or more such children, then the yearly sum of two hundred pounds, to be equally divided among them, share and share alike; and shall and do, at their or his discretion, either themselves pay and apply such sum or sums for the maintenance, support, and education of such child or children accordingly, or shall and do (if they the said trustees or trustee for the time being shall think proper) pay the said several sums of money to the guardian or guardians for the time being of such child or children, to be by such guardian or guardians applied for, or towards the maintenance and education of such child or children respectively; and it is hereby agreed and declared, that such respective sums for maintenance as aforesaid shall

shall be paid by quarterly payments, on the four most usual feasts or days of payment hereinbefore mentioned, in each and every year, by even and equal portions; the first payment thereof to begin and be made on such of the said days, as shall first happen after the decease of the said William Frederick, dying in the lifetime of the said Francis Frederick.

Survivorship.

Provided always, that in case any of the said children, who shall become entitled to the provision for maintenance as last hereinbefore mentioned, shall afterwards die in the lifetime of the said Francis Frederick, then the share of each such child so dying of and in such provision for maintenance as aforesaid, shall devolve upon, and vest in the survivors or survivor of them, in augmentation of, and in addition to, his, her, or their original share or shares thereof, as aforesaid; But so as, that the provision of maintenance for no one such child shall exceed the yearly sum of one hundred pounds, nor for two such children the yearly sum of one hundred and fifty pounds between them.

And

And upon further trust, that they the said John Jones and James Impey, and the survivor of them, his executors, administrators, and assigns, shall and do permit and suffer the residue and surplus of the rents, issues, and profits of the premises comprised in the said term of two hundred years, which shall remain after, and not be applied in, for, or towards the execution and performance of the trusts of the same term, to be had, received, and taken by the person or persons, to whom the next estate in reversion or remainder expectant on the determination of the said term shall belong.

In trust to permit the persons next in remainder to receive the overplus of the rents.

Provided also, and it is hereby further agreed and declared, that when the trusts hereinbefore declared of and concerning the said term of two hundred years shall have been executed and performed, or satisfied, or shall have become unnecessary, or incapable of taking effect, and the costs and charges of the trustees of the same term, their executors, administrators, and assigns, in and about the execution and performance of the same trusts, shall have been fully paid and satisfied (and which they are hereby respectively authorised and empowered to levy and raise

Cesser of this term.

by all or any of the ways and means aforesaid, and to retain accordingly); then, and immediately thenceforth, the said term of two hundred years of and in the premises therein comprised, or so much thereof as shall remain unfold and undisposed of for the purposes aforesaid, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

Trusts declared
of the term of
five hundred
years.

And as, to, for, and concerning the said term of five hundred years hereinbefore limited in use to the said Launcelot Lyon and Luke Lucas, their executors, administrators, and assigns as aforesaid, it is hereby agreed and declared, that the same is so limited to them upon the trusts, for the intents and purposes, and under and subject to the provisions, declarations, and agreements hereinafter mentioned, expressed, and declared of and concerning the same term; (that is to say),

In trust for
raising portions
for younger
children; and
for daughters,
upon failure of
issue male.

Upon trust, in case there shall be one or more child or children of the said William Frederick on the body of the said Grace Griffith, his intended wife, to be begotten, other than and besides an eldest or only son; or in case there shall be no son of the said
William

William Frederick on the body of the said Grace Griffith, his intended wife, to be begotten, or, being any such son or sons, all and every of them shall die without issue of his or their body or respective bodies, before any of them shall attain the age of twenty-one years, and there shall be one or more daughter or daughters of the said William Frederick on the body of the said Grace Griffith to be begotten, whether born in the lifetime of the said William Frederick, or after his decease; then that they the said Launcelot Lyon and Luke Lucas, or the survivor of them, his executors, administrators, or assigns, shall and do either in the lifetime of the said William Frederick with his consent in writing, or else not till after his decease (but subject and without prejudice to the life estate of the said Francis Frederick, and to the raising and paying the said yearly rent charge, or sum of £. *one hundred* hereinbefore limited in use to the said Grace Griffith for her life, and to such remedies for recovering the same as aforesaid) by demise, sale, or mortgage of the manor, messuages, lands, advowson, tenements, hereditaments, and premises comprised in the said term of five hundred years, or of a competent part

R 2 thereof,

thereof, for all or any part of the same term, or by and out of the rents, issues, and profits thereof, or by bringing against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear, or by all or any of the said ways and means, or by such other ways and means, as they the said Launcelot Lyon and Luke Lucas, or the survivor of them, his executors, administrators, or assigns shall think fit, raise and levy, or borrow and take up at interest, for the portion or portions of such child or children, other than and besides an eldest or only son, or of such daughter or daughters as aforesaid, the sum or sums of money hereinafter mentioned; (that is to say) if there shall be but one such younger child, or one such daughter, the sum of three thousand pounds of lawful money of Great Britain, as and for his or her portion; and to be paid and payable to, and to become vested in, such younger child, or daughter, at or upon such age, day, or time, as the said William Frederick, by any deed or writing to be signed, sealed, and delivered by him in the presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, to be by him signed and published in the presence of, and attested by,

three

If but one
younger child,
or daughter,
£. 3,000, to be
paid according
to the appoint-
ment of the
husband.

three or more credible witnesses, shall direct or appoint; and in default of such direction or appointment, to be an interest vested in such child, being a younger son, at his age of twenty-one years, or being a daughter, at her age of twenty-one years, or day of marriage (which shall first happen); and to be paid to him or her at or upon such age or time accordingly, if the same shall happen after the decease of the said William Frederick; but if the same shall happen in his lifetime, then the same shall be raised and paid immediately after his decease, unless he shall signify his consent in writing, under his hand and seal, that the same shall be raised and paid in his lifetime; and if there shall be two or more such younger children, or two or more such daughters as aforesaid, then the sum of five thousand pounds; to be shared and divided between and among them, in such parts or proportions, and to vest in, and be paid to, such children respectively, at or upon such ages, days, or times, and to be subject to such charges, provisos, and limitations (such charges and limitations being for the benefit of some or one of them), and in such manner, as the said William Frederick, by any deed or deeds, writing or writ-

If two or more,
£. 5,000.

ings, to be by him signed, sealed, and delivered in the presence of, and attested by, two or more credible witnesses, or by his last will and testament in writing, to be signed and published by him in the presence of, and attested by, three or more credible witnesses, shall direct or appoint; and in default of such direction or appointment, to be equally divided between or among such younger children or daughters, share and share alike; the share or shares of such of the said children as shall be a younger son or sons, to be paid to him or them at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters, to be paid to her or them at her or their age or respective ages of twenty-one years, or day or respective days of marriage (which shall first happen), in case the same shall happen after the decease of the said William Frederick; but in case any of such children, being a younger son or sons, shall attain his or their age or respective ages of twenty-one years, or being a daughter or daughters, shall attain her or their age or respective ages of twenty-one years, or be married as aforesaid, in the lifetime of the said William Frederick, then the
share

share or shares of such younger son or sons so attaining the age of twenty-one years, and of such daughter or daughters so attaining that age, or marrying, in the lifetime of the said William Frederick, shall be a vested interest or vested interests in him, her, or them respectively; but the raising and payment of such share or shares shall be postponed till after the decease of the said William Frederick, unless he shall signify such consent as aforesaid that the same, or any of them, shall be raised and paid in his lifetime.

Provided always, that no sale or mortgage, for raising such portion or portions, as hereinbefore mentioned, of the said hereditaments and premises, or any of them, or any part thereof, shall be made in the lifetime of the said Francis Frederick, unless with his consent and approbation, testified in writing under his hand and seal.

No mortgage or sale to be made in the lifetime of the father.

Provided always, and it is hereby agreed and declared between and by the said parties hereto, that in case any appointment shall be made in pursuance of the powers aforesaid, or either of them, which shall only extend to a part or parts of the sum or sums of money

Provision in case of a partial appointment.

hereby intended for the portion or portions of such child or children as aforesaid, such appointment shall be valid and effectual, notwithstanding the non-appointment of the remaining part or parts of such portion or portions; but in that case, any child entitled to a share under such appointment, shall be entitled to no further share of and in the remaining or unappointed part or parts of the monies hereby intended for portions as aforesaid, until every other child for whom a portion is hereby intended, shall have received and been paid so much out of such unappointed residue as will make his or her portion or share equal (if not otherwise so) to that of the child so taking under such appointment as aforesaid,

Provision for
maintenance.

And upon further trust, that they the said Launcelot Lyon and Luke Lucas, and the survivor of them, his executors, administrators, and assigns, shall and do in the mean time from and after the decease of the said William Frederick and until the portions hereby intended for daughters and younger sons as aforesaid shall respectively become payable as aforesaid (subject and without prejudice as aforesaid) by and out of the rents,

rents, issues, and profits of the manor, messuages, lands, advowson, tenements, hereditaments, and premises comprised in the said term of five hundred years, levy and raise, for the maintenance and education of such child or children, such yearly sum and sums of money as hereinafter mentioned; (that is to say) until such child or children shall respectively attain the age of twelve years, such yearly sum for each of them as will be equivalent to the interest of the portion hereby intended for him or her as aforesaid, after the rate of two pounds for every one hundred pounds by the year; and from and after the age of twelve years, and until such portion or respective portions shall become payable, such yearly sum for each such child as will be equivalent to the interest of the portion hereby intended for him or her as aforesaid, after the rate of four pounds for every one hundred pounds by the year; and also shall and do, at their or his discretion, either themselves pay and apply such sums for the maintenance and education of such child or children accordingly, or shall and do (if they the said trustees or trustee for the time being shall think proper) pay the said several sums of money to the guardian or guardians

dians for the time being of such child or children, to be by such guardian or guardians applied for or towards the maintenance and education of such child or children respectively; and it is hereby agreed and declared, that such respective sums for maintenance as aforesaid, shall be paid by quarterly payments on the said four most usual feasts or days of payment hereinbefore mentioned, in each and every year, by even and equal portions; the first payment thereof to begin and be made on such of the said days, as shall first happen after the decease of the said William Frederick.

Survivorship.

Provided always, and it is hereby agreed and declared between and by the said parties hereto, that if there shall be more than one such child, for whom portions are hereby provided as aforesaid, and any of them, being a younger son or sons, shall depart this life, or become an eldest or only son, before he or they shall respectively attain the age of twenty-one years, or, being a daughter or daughters, shall depart this life, before she or they respectively shall attain that age, without being or having been married; then, and in such case, and in default of, and

subject to, any such appointment as aforesaid, the portion hereby intended to be provided for each such daughter, and for each such son so dying, or becoming an eldest or only son, or so much, and such part thereof, as shall not be sooner advanced for any younger son or sons as hereinafter mentioned, shall accrue and belong to the survivor or survivors, or other or others of such children (not being an eldest or only son), and shall vest in, and be paid to, him, her, or them (if more than one) in equal parts and shares, at or upon such and the same ages, days, and times respectively, and in such and the same manner, as is hereinbefore declared touching or concerning his, her, or their original portion or portions; or as near thereto as circumstances will permit: and that in case any other or others of such children shall die, or become an eldest or only son as aforesaid, before such accruing or surviving part or share, or parts or shares, shall become vested as aforesaid, then all and every such accruing or surviving part or share, parts or shares, shall again be subject and liable to such new chance, contingency, and condition of accruer to the survivor or survivors, or other or others of such

such children, as before is declared touching his, her, and their original portion and portions; but so nevertheless, that no one child shall by survivorship or otherwise have or be entitled to more than the sum of £. for his or her portion.

Power to raise
money for the
advancement of
younger sons.

Provided always, and it is hereby also agreed and declared between and by the said parties hereto, that it shall and may be lawful to and for the said Launcelot Lyon and Luke Lucas, and the survivor of them, his executors, administrators, or assigns, at any time or times in the lifetime of the said William Frederick, with his consent, signified by some deed or deeds, writing or writings, to be sealed and delivered by him in the presence of, and to be attested by, two or more credible witnesses, and at any time or times after his decease, by and of the proper authority of the said Launcelot Lyon and Luke Lucas, or the survivor of them, his executors, administrators, or assigns, as they or he shall see occasion, to raise and levy, by all or any of the aforesaid ways and means (but subject nevertheless, and without prejudice as aforesaid), any sum or sums of money, in part of the portion or portions hereby

hereby intended for such of the said children, as shall be a younger son or sons, and shall and do, with the consent in writing of the said William Frederick during his life, and after his decease at their or his discretion, pay and apply the monies so to be raised for the purpose of placing and putting such younger-son or sons, for whom, or in part of whose then apparent portion or portions such sum or sums of money shall be raised, in or to any trade, business, profession, or employment, or otherwise for his or their advancement in the world, notwithstanding his or their portion or portions shall not then have become payable as aforesaid; so nevertheless, that such sum and sums of money, so to be raised as last mentioned, shall not exceed one half part of the apparent portion or portions of such younger son or sons respectively; and so nevertheless, that such sum and sums shall be considered and taken as part of the portion or portions hereby provided for such younger son or sons, for whose benefit such sum or sums shall be raised as aforesaid.

And upon this further trust, that they the said Launcelot Lyon and Luke Lucas, and the survivor

The persons next in remainder to receive the surplus of the rents.

survivor of them, his executors, administrators, and assigns, shall and do permit and suffer the person or persons, to whom the next or immediate reversion or remainder expectant upon the determination of the said term of 500 years of and in the premises therein comprised, shall for the time belong, to receive the residue or surplus of the rents and profits, which shall remain after, and not be applied in or towards, the execution and performance of the trusts hereby declared of the said term of 500 years.

Money advanced
by the husband
in his lifetime
to be considered
as part of the
portions.

Provided also, and it is hereby further agreed and declared between and by the said parties hereto, that in case the said William Frederick shall in his lifetime give or advance any sum or sums of money for or towards the preferment or advancement of any of the said children, being a younger son or sons, in the way of, or for the placing him or them in, any profession, business, or employment, or, being a daughter or daughters, in marriage; then, and in such case, if any such sum or sums of money so to be advanced shall be equal to, or exceed, the portion or portions hereinbefore intended to be provided for such child or children respectively,

tively, such advanced sum or sums shall be accounted in full for the portion or portions so as aforesaid intended to be provided for such child or children respectively; but if such advanced sum or sums shall be less than the portion or portions hereinbefore intended to be provided for such child or children respectively, then such advanced sum or sums shall be accounted as part of the portion or portions so as aforesaid hereinbefore provided or intended for such child or children respectively; unless he the said William Frederick shall declare the contrary thereof respectively by any writing under his hand, attested by two or more credible witnesses.

Provided also, and it is hereby further agreed and declared, that when the trusts hereinbefore declared of and concerning the said term of 500 years, shall have been executed and performed, or satisfied, or shall have become unnecessary, or incapable of taking effect, and the costs and charges of the trustees of the same term, their executors, administrators, and assigns, in and about the execution and performance of the same trusts, shall have been fully paid and satisfied (and which they are hereby respectively

authorised

Cesser of the
term.

authorised and empowered to levy and raise by all or any of the ways and means aforesaid, and to retain accordingly); then, and immediately thenceforth, the said term of 500 years of and in the premises therein comprised, or so much thereof as shall remain unsold and undisposed of for the purposes aforesaid, shall cease, determine, and be utterly void to all intents and purposes whatsoever.

Power enabling
the intended
husband to make
a jointure on
any after taken
wife.

Provided also, and it is hereby further agreed and declared between and by the said parties hereto, that if the said Grace Griffith shall die in the lifetime of the said William Frederick, then, and in such case, it shall and may be lawful for the said William Frederick, either before or after his marriage with any woman or women, whom he shall thereafter marry, or take to wife, by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of, and attested by, two or more credible witnesses (but subject nevertheless, and without prejudice to the said term of 200 years, and the trusts thereof, and to the said estate hereby limited to the said Francis Frederick,

Frederick for his life of and in the aforesaid hereditaments and premises) to grant, limit, or appoint to, or to the use of, any woman or women, whom the said William Frederick may after the decease of the said Grace Griffith happen to marry, for her or their life or lives, and for her or their jointure or jointures, and in bar, or without being in bar, of her or their dower, any annual sum, or yearly rent charge, not exceeding for any such woman £. by the year, tax free, and without any deduction whatsoever, to be issuing out of, and charged and chargeable upon, all or any part or parts of the premises, with such powers and remedies for recovering such yearly rent charge or sum, when in arrear, and for defraying all costs and expences occasioned by the non-payment thereof, as to the said William Frederick shall seem meet; and to grant, demise, limit, or appoint all or any of the premises to any person or persons, his or their executors and administrators, for such term or terms of years, for the better securing the due payment thereof, to take effect immediately after the death of the said William Frederick (but without prejudice as aforesaid), as to him shall seem

meet; so as, that such term and terms of years be made determinable on the ceasing of the rent charge thereby secured, and full payment of all arrears thereof, and all costs and charges occasioned by the non-payment thereof.

Power of leasing.

Provided always, and it is hereby further agreed and declared, that it shall and may be lawful to and for the said Francis Frederick and William Frederick from time to time, during their joint lives, and after the decease of either of them, then to and for the survivor of them from time to time during his life, and after decease of such survivor, then to and for the guardian or guardians for the time being of any child or children of the said William Frederick on the body of the said Grace Griffith to be begotten, who, by virtue of, or under the limitations hereinbefore contained, shall be entitled to the actual freehold or inheritance of the said hereditaments and premises from time to time, during the minority of such child or children respectively, by any indenture or indentures to be sealed and delivered by them or him respectively in the presence of, and

and to be attested by, two or more credible witnesses, to demise or lease all or any part or parts of the said hereditaments and premises, with the appurtenances, to any person or persons for any term or number of years, not exceeding twenty-one years in possession, and not in reversion, or by way of future interest; so as, that there be reserved and made payable on every such lease, during the continuance thereof, the best and most improved yearly rent or rents, to go along with, and be incident to, the immediate reversion of the premises so to be leased, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift for the making thereof; and so as, that in every such lease there be contained a condition of re-entry on the non-payment of the rent or rents to be thereon, or thereby, respectively reserved by the space of twenty-one days next after the same shall become due and payable; and so as, that the lessee or the respective lessees, to whom such lease or leases shall be made, seal and deliver a counterpart or counterparts of such lease or leases; and so as, that none of the lessees, to whom any such lease or

leases shall be made, be, by any clause or words therein contained, authorized to commit waste, or exempted from punishment for committing waste; any thing herein contained to the contrary thereof notwithstanding.

Clauses of indemnity.

Provided also, and it is hereby further agreed and declared between and by the said parties hereto, that the said several trustees, and each and every of them, their and each and every of their heirs, executors, administrators and assigns shall be charged and chargeable only for so much money, as they and every of them shall respectively actually receive by virtue of, or under, the trusts aforesaid; and that any one or more of them shall not be answerable for the other or others of them, nor for the acts, receipts, neglects, or defaults of the other or others of them; but each of them for his own acts, receipts, neglects, and defaults only; nor shall they or any of them be answerable or accountable for any person or persons, who is, are, or shall be the receiver or receivers of the rents and profits of the said hereditaments and premises, or any of them, or any
part

part thereof; or in whose hands the same, or any of the trust monies, shall or may be deposited or lodged for safe custody; nor for any misfortune, loss, or damage, which may happen in the execution of any of the aforesaid trusts, or in relation thereto, except the same shall happen by or through their own wilful neglects or defaults respectively: and also that the said several trustees, and each and every of them, their and each and every of their heirs, executors, administrators, and assigns, shall and may, by and out of the monies, which shall come to their respective hands by virtue of the trusts aforesaid, retain to, and reimburse themselves respectively, and also allow to their and his co-trustee and co-trustees, all loss, costs, damages, and expences, which he or they, or any of them, shall or may respectively suffer, sustain, expend, disburse, or be put unto, or which shall or may be to him, them, or any of them, occasioned for, or on account, or by reason or means of, the trusts hereby in them reposed, or the management and execution thereof, or otherwise howsoever relating thereto (the allowance of which costs shall be regulated by the me-

thods practised between solicitor and client, and not as between party and party).

Covenants for
the title.

And the said Francis Frederick and William Frederick for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, do hereby covenant, promise, and agree with and to the said Henry Howard and Henry Hunt, their heirs and assigns, in manner and form following; (that is to say),

That (for and notwithstanding any act, deed, matter, or thing whatsoever made, done, committed, executed, or suffered by him the said Francis Frederick, or any of his ancestors, or by the said William Frederick, to the contrary) they the said Francis Frederick and William Frederick now at the time of the sealing and delivery of these presents, have in themselves good right, full power, and lawful and absolute authority, to limit and appoint, grant, bargain, sell, release, and convey the manor, messuages, lands, advowson, tenements, hereditaments, and premises hereby limited and appointed, granted and released, or intended so to be,
and

and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, to the uses, and upon and for the trusts, intents, and purposes, and in manner and form aforesaid, according to the true intent and meaning of these presents:

And likewise, that the manor, messuages, advowson, lands, tenements, hereditaments and premises hereby limited, appointed, granted, and released, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, shall and lawfully may from time to time, and at all times hereafter, remain, continue, and be, to the several uses, upon the several trusts, and for the several intents and purposes, hereinbefore limited, created, expressed, and declared of and concerning the same, and shall and may be peaceably and quietly had, held, and enjoyed accordingly; without the let, suit, trouble, denial, eviction, ejection, disturbance, molestation, hindrance, interruption, claim, or demand whatsoever of, from, or by the said Francis Frederick and William Frederick, or either of them, or

their or either of their heirs, or any person or persons claiming, or to claim by, from, through, under, or in trust for them, or any of them, or any of the ancestors of the said Francis Frederick ;

And that free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, or otherwise by them the said Francis Frederick and William Frederick, or one of them, their or one of their heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all former, and other, gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, entails, trusts, wills, statutes merchant and of the staple, recognizances, judgments, extents, executions, rents, arrears of rent, annuities, legacies, sum and sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the king's majesty, and of, from, and against all and singular other titles, troubles, charges, and incumbrances whatsoever, (save and except, &c.):

And

And moreover, that they the said Francis Frederick and William Frederick, and their heirs, and all and every other person or persons, having, or lawfully claiming, or who shall or may at any time or times hereafter have, or lawfully claim, any estate, right, title, interest, inheritance, property, or demand whatsoever, either at law or in equity, of, in, to, or out of the manor, messuages, lands, advowson, tenements, hereditaments and premises hereby limited and appointed; granted and released, or intended so to be, or of, in, to, or out of any of them, or any part or parcel thereof, by, from, under, or in trust for them, or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said Henry Howard and Henry Hunt, their heirs or assigns, but at the proper costs and charges in the law of the said Francis Frederick and William Frederick, their heirs, executors, or administrators, or some, or one of them, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed all and every such further and other lawful and reasonable act and acts, thing and things, deed and deeds, devices, conveyances, and assurances
in .

in the law whatsoever, for the further, better, more perfectly, and absolutely granting, releasing, and assuring the manor, messuages, lands, advowson, tenements, hereditaments, and premises hereby limited and appointed, granted and released, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, to the several uses, upon the several trusts, and for the several intents and purposes, and under and subject to the several powers, provisos, declarations, and agreements hereinbefore, created, expressed, declared, and contained of and concerning the same, or such of them as shall then remain to be performed, and capable of taking effect; be the same by fine, feoffment, common recovery, or recoveries, or other matter of record, or not of record, or otherwise howsoever; as by them the said Henry Howard and Henry Hunt, or the survivor of them, his heirs or assigns, or any of them, their, or any of their, counsel in the law, shall be reasonably advised, or devised, and required; so as, that such further assurance or assurances contain or imply in them no further or other covenant or warranty than against the person or persons, who shall make and execute the same,

his,

his, her, or their heirs, executors, and administrators, acts and deeds only; and so as, that the party or parties, who shall be required to make and execute any such further assurance or assurances, be not compelled, nor compellable, for the making or doing thereof, to go or travel from his, her, or their dwelling, or respective dwellings, or usual place, or places of abode. In witness, &c.

N O T E S.

Note A.

BESIDE the general receipt expressed in the body of the deed, it is usual to indorse a particular one: but this practice is of a modern date. see 2 Atk. 478. 3 Atk. 112. It is a rule of equity, that from the time of the contract the vendor is considered, as to the estate, a trustee for the purchaser, and the vendee, as to the money, a trustee for the vendor. See *Green v. Smith*, 1 Atk. 573. *Pollexfen v. Moore*, 3 Atk. 273, note 2.

Note B.

Before the statute of frauds, an estate *per auter vie* was considered as of a freehold nature, even when limited to the *executors and administrators*. 2 Roll. ab. 151. *Buller v. Cheverton*. Carth. 376. But it should seem, that by the statute 14 Geo. 2. c. 20. s. 9. an estate *per auter vie*, when limited to the *executors*, must be considered

as *personal* estate. See Williams v. Jekyl, 2 Vef. 681. 683. 684. 4 Term Rep. 230. However an estate *per auter vie*, when made to the grantee *and his heirs*, is liable to debts by specialty, and is within the statutes of fraudulent devises, 3 and 4 William and Mary. c. 14. Westfaling v. Westfaling, 3 Atk. 460.

Note C.

The covenant or proviso enabling the grantee to *enter* and *hold* the land, until the arrears be satisfied, creates an interest, which enables him to recover the possession in ejectment. It was formerly holden, that, in such case, an actual entry was necessary in order to support an ejectment; but it was settled previously to the statute 4 Geo. 2. c. 28. that the general confession was sufficient, without the proof of an actual entry. See Gilb. ejectment. 20. 21. Ed. 1781.

It is generally true, that no person can take advantage of a condition of entry, unless there be a previous demand of the rent, or unless it be previously stipulated to the contrary.

contrary. Co. Litt. 201. b. 5 Co. 40. b.
1 Roll. ab. 459.

Note D.

Upon the grant of a rent charge the grantee has the choice of one of two remedies for the recovery of it, when in arrear; by distress, and by writ of annuity: but he cannot make use of both of them at the same time. Litt. Sec. 219. This double provision, however, does not extend to rents *reserved* to the grantor, nor to rents created by will, or granted for equality of partition, or in lieu of dower. Co. Litt. 144. a. b. 145. a. 1 Roll. ab. 226. 6 Co. 58. b. So if a man grant, that if A. be not paid a certain yearly sum, he may distrain for it in the manor of D.; this is a good rent-charge, and yet a writ of annuity will not lie for the recovery of it. Litt. f. 221.

Note E.

The grantor covenants for himself, his heirs, executors, and administrators, not only to pay the annuity, or rent charge, when it shall

shall become due, but also a proportionable part of it from the time, which shall elapse between the last quarterly day of payment next preceding the death of the grantor and the day of his decease. This provision is very necessary; for if the grantor die before the day of payment, the annuity and rent-charge are determined; and equity will not make any apportionment of it in favour of the grantee. *Pearly v. Smith.* 3 Atk. 261. The payment of an annuity or rent is similar in this case to the application of dividends arising upon money in the public funds, payable to one for life; in which case, if the person, to whom they are made payable, should die before the day of payment; they cannot be apportioned. *vide Rashleigh v. Masters,* 3 B. C R. 99. 101. *Wilson v. Harman,* 2 Vef. 672. *Amb.* 279.

By the common law, if tenant for life had made a lease for years, which determined by his death, and had died before the rent was due; the rent was lost, both to the executors, and those in remainder or reversion. *Vide* 2 P. W. 502. 1 P. W. 392. But the statute 11 Geo. 2. c. 19. f. 15. gives an action on the case to the executors and administrators

tors of the tenant for life to recover from the under tenants such proportionable part of the rent, as shall be incurred from the last day of payment to the decease of the tenant for life. In the case of *Paget v. Gee*, (Amb. Rep. 198.) it was said, that, by an equitable construction, the above statute extended to leases for years made by tenants in tail, not warranted by the statute 32 Hen. 8. c. 28. and also to leases for years made by tenants for years determinable on their own lives. But see *Vernon v. Vernon*. 2 Bro. cha. ca. 659.

Note F.

For acts, which do, or do not, amount to a breach of the covenant against prior incumbrances, see *Hamington and Rydear's case*, 1 Leon. 92. 1. Keb. 427. *Dyer* 139. a. *Ander*. 236. 2 Vern. 45.

Note G.

It should seem, that the further assurance must be at the costs of the person, to whom

the conveyance is made, unless it be provided to the contrary. See 1. Bulf. 90. And in *Heron v. Treyne*, 2. L. Ray. 750. it was said, that in a covenant to make further assurance at the costs of B, notice of the kind of assurance must be given to him, before he ought to tender the costs; but otherwise, if the covenant be to make a particular conveyance.

Note H.

It has been repeatedly determined, that parol evidence cannot be admitted to prove, that it was originally the agreement of the parties, that the grantor should be at liberty to repurchase the annuity. *Irnham v. Child*, 1 Bro. 92. *Portmore v. Morris*, 2 Bro. 219. *Hare v. Sherwood*, 3 Bro. 168. Clauses of repurchase have therefore become very frequent in grants of annuities.

A clause of this kind in the grant of an annuity is introduced upon the same principle, that a vendor of an estate in fee-simple stipulates with his vendee, that he may be at liberty within a given time, and for a certain

price, to repurchase the estate. See 1 Bridg. Con. 56. Amb. 19. An annuity, granted subject to a clause of repurchase, differs from a mortgage or security for money in these points: in a mortgage the principal debt still continues, until the equity of redemption be foreclosed; but upon the purchase of an annuity, the principal is gone for ever, and consequently if the repurchase be made, the money paid upon that occasion is not in discharge of a debt, but as the consideration for a new purchase. So a mortgage is the personal estate of the mortgagee, though it be made to him *in fee*; but an annuity is considered as the real estate of the grantee, if it have a freehold quality. 2 Atk. 497. 1 Ves. 403.

However, as courts of equity lean very much against contracts of this kind, because they tend to obtain more than legal interest, they have been always anxious to find out reasons, applicable to the particular case, for contriving sales of annuities as mere securities for money lent, and thereby to suffer a redemption, as in the common case of a mortgage. To use the words of Lord Hardwicke (3. Atk. 279.), "There
" has

"has been a long struggle between the equity of this court, and persons who have made it their endeavour to find out schemes to get exorbitant interest, and to evade the statutes of usury." In deciding therefore upon cases of this nature, the court has generally considered them in two points of view: first, Whether they ought to be reckoned (considering all the circumstances) as absolute sales, or merely as securities for money lent? Secondly, Admitting them to be sales, whether there be any grounds to relieve against them? See *Lawley v. Hooper*, 3. Atk. 278. and the cases cited in the note to the last edition.

Note I.

If it be intended that the releasee should take an estate in fee-simple, or fee-tail, it is absolutely necessary, that it should be ascertained by words of limitation. Litt. f. 465.

It may not be unacceptable, in this place, to offer a few observations upon the different powers of the premises and the habendum, when both limit distinct estates, and in such

limitation are repugnant to, and inconsistent with, each other.

It may be deemed an established rule, that where no estate is expressed in the premises (in which case the grantee has an estate for life by implication), and an express estate is limited by the habendum, the habendum shall controul the implied estate created by the premises. Co. Litt. 183. a. Thus, if land or rent be granted to I. S. generally, habendum to him *for years*, or *at will*; by the premises I. S. takes an implied estate for life, but the habendum abridges it into an express estate for years, or at will. *Ibid.* 8 Co. 154. b. In such a case, if the habendum be void, yet the implied estate for life created by the premises shall not hold good against the express estate made by the habendum, though such express estate be altogether ineffectual. Therefore, if land be given to A. generally by the premises, habendum after the death of the grantor to A. in fee, in tail, or for life, in this case the whole deed is void; for there can be no estate of freehold made to commence *in futuro*, and the implied estate for life cannot make it a grant to begin presently in possession. 2 Co. 55.
a. b.

a. b. Cro. Eliz. 254. 255. But if there be an *express* estate limited to A. in fee by the premises, habendum after the death of the grantor to A. in tail; in this case the habendum is void, and A. shall take a present estate by the premises. 3 Lev. 339. Carter v. Madgwick. Vide Dyer, 272. a. pl. 30. 2 Roll. ab. 66. pl. 4. Hob. 171. Moor, 881. pl. 1236.

So it is a rule, that where an *express* estate is limited in the premises, and an estate is created by the habendum in abridgment of, inconsistent with, or repugnant to, the estate limited in the premises, in such case the premises shall be good, and the habendum void. Thus if lands be conveyed to I. S. and his heirs, habendum to him for life; I. S. has an estate in fee by the premises, and the habendum is void. 8 Co. 56. b. 2 Co. 24. a.

We are to observe, with respect to this rule, that whenever a ceremony or formality is requisite to the perfection of the estate limited in the premises, besides the delivery of the deed (such as livery of seisin), and no other ceremony is necessary to complete the estate limited by the habendum, than the

mere delivery of the deed; in all such cases the estate created by the habendum shall stand, and that limited by the premises shall be void. Thus if A. grant an estate to B. and his heirs, habendum to B. for years, the habendum shall abridge the estate in fee given by the premises into an estate for years. 2 Co. 24. a. The reason of this construction is, because by the delivery of the deed the estate for years limited by the habendum is perfected; whereas another process (viz. livery of seisin) is required to vest the estate of freehold. When B. has the estate for years once vested in him, no subsequent ceremony can divest it out of him. This construction evidently depends upon the actual priority of the delivery of the deed; and I conceive that it will hold in the case of a bargain and sale, because the inrolment, like livery of seisin in the case of a feoffment, will come too late to divest the estate for years previously vested in B. by the delivery of the deed. But the reasons of this construction do not, I apprehend, apply to the conveyance by lease and release; for if a man convey by lease and release to B. in fee, habendum to him for years, the fee, as well as the term of years, may vest in B. by the
mere

mere delivery of the deed; and as the law says, that every grant shall be taken most strongly against the grantor, B. will have an estate in fee by the premises, and the habendum will be void, according to the rule just mentioned. So upon the same principle, if a grant had been made of a rent *in esse*, or a feignory, to I. S. and his heirs, habendum to him for years, or for life; although in this case another ceremony was formerly requisite, besides the delivery of the deed, viz. attornment, yet as that ceremony was as necessary upon the grant of a rent *in esse*, or feignory, to create an estate for years or for life, as an estate in fee, the habendum in such case was void. 2 Co. 24. a.

This rule, that where the habendum is repugnant to, or inconsistent with, the express estate limited in the premises, the habendum is entirely void, was evidently established in favour of the grantee, and to the disadvantage of the grantor; for where an express estate in fee simple is given by the premises, the grantor shall not be allowed to abridge it by the habendum into a mere estate for years or for life. But the reasons of the above rule fail, whenever the grantee's in-

terest is enlarged by the habendum, even where there is an express estate limited to him by the premises. Therefore what has been advanced concerning the above rule may be corrected with this observation, that the habendum, when inconsistent with, or repugnant to, the premises, can never abridge an express estate given by the latter to the grantee, whenever there is the same ceremony required to perfect the estate limited in the premises, and that created by the habendum; but that the habendum may enlarge the estate limited in the premises under similar circumstances. Thus if an estate be granted to A. for life, habendum to him in fee, the same formality being requisite to create both estates, the habendum shall enlarge the estate for life into an estate in fee. Co. Litt. 299. a.

It is clear also, that the above doctrine in favour of the grantee depends chiefly upon the inconsistency and repugnancy of the habendum. Thus to put the same case again, an estate is given to A. and his heirs, habendum to him for life; this habendum is totally void, and A. has a fee simple by the premises: the former creates an estate of inheritance,

heritance, whilst the habendum limits it to an estate for life; the habendum therefore is quite inconsistent with, and repugnant to, the premises. But though the grantor be not allowed entirely to alter the nature of the estate of the grantee, yet he is suffered to qualify it, if there be no inconsistency in so doing. Therefore, if a man grant lands to another and his heirs, habendum to him and the heirs of his body; in such case the habendum qualifies the premises, and the grantee has an estate tail, with a fee simple expectant thereon. Co. Litt. 21. a. Turnman v. Cooper, Cro. Jac. 476. (Sed *contra*, as to the expectant fee thereon. Perk. f. 170. 8 Co. 154. b.). The word heirs is extensive, and may relate to heirs special, as well as general; and the grantor by the habendum signifies what heirs he intended to describe. Upon the same principle, if a conveyance be made to A. and his heirs, habendum to him and his heirs during the lives of B. C. and B.; the word heirs, in this case, in the premises is as applicable to a descendible estate of freehold, as to a fee simple; the habendum therefore explains the premises; it declares, that the word

heirs

heirs in the premises was merely applicable to an estate of freehold descendible to heirs during the lives of B. C. and D. T. Jones 4. So too if lands be granted to A. and the heirs of his body, habendum to him in fee; A. has by the premises an estate tail, and by the habendum a fee simple expectant thereon. 8 Co. 154. b.

The habendum is sometimes used to explain the nature of the estates, which grantees are intended to take. Thus if a feoffment be made to A. and B. of twenty acres, habendum, as to one moiety, to A., habendum, as to the other moiety, to B.; by the premises A. and B. take a joint estate, and by the habendum, they are tenants in common; and yet the habendum is good. Co. Litt. 183. b. 190. b. The habendum, in this instance, is not repugnant to the premises, because it makes no division of that undivided possession, which is given by the latter. However if the premises limit twenty acres to A. and B., and the habendum expressly give ten acres to A. and the other ten acres to B., the habendum is void; for it makes an express division of the acres; which

which is inconsistent with the undivided possession limited by the premises. 1 P. W. 19.

So too if a lease be made to two, habendum to the one for life, remainder to the other for life, this habendum is good. 2 Co. 55. b. Co. Litt. 183. b. Dowse's case, Cro. El. 25. 89. 2 Roll. ab. 65.

A grant was made to A., habendum to him, B., and C. *pro termino vite eorum, et alterius eorum successive diutius viventium*; it was holden, that the habendum was void: for neither B. nor C. could take any thing as lessees in possession; because they were not parties to the deed; nor were they named in the premises; nor could they take jointly by way of remainder; because the limitation was to them *successive*; neither could they take in possession because it did not appear who should take first. Hob. 313. Windshire v. Hobart.

Note K.

The mode of preventing dower, introduced in this precedent, appears to have been suggested by the late Mr. Fearne (vide cont. remainders, 509. 4 ed.) in consequence of the principle established in *Dumcombe v. Duncomb*, 3 Lev. 437.

For the different methods of barring a woman of her dower, see Mr. Butler's notes, Co. Lit. 216. a. and under fol. 381. b.

Note L.

The grantor covenants, 1st, That notwithstanding any act done by him or his ancestors, he is seised in fee. 2dly, That notwithstanding any such act, he has a good right to grant, &c. 3dly, That the grantee may peaceably enjoy the premises without any interruption, &c. by the grantor, or by any other person or persons claiming by or under him or his ancestors. 4thly, That the premises are free from all incumbrances,

&c. occasioned by him or his ancestors, or any claiming under them. All these covenants are distinct; they do not form one entire sentence.

In the case of *Nervin v. Muns*, 3 Lev. 46. a grantor covenanted, 1st, That notwithstanding any act done by him to the contrary, he was seised in fee simple, &c. 2dly, That he had a good power and lawful authority to sell. 3dly, That the lands were free from any incumbrances made by him, his father, or his grandfather. 4thly, That the grantee should enjoy against all persons claiming under him, his father, or his grandfather. The question was, whether the words in the first covenant, *notwithstanding any act done by him*, extended to the second covenant? For if they did, then there was no breach of covenant. It was admitted by the whole court, that all these covenants were several and distinct; and three of the judges held, against the opinion of North, C. J., that, though these covenants were distinct, yet the two first were synonymous, and of the same nature; for if a man were seised in fee, he certainly had good right and full power to sell: and
it

it could not be intended, that when the grantor covenanted against his own acts, that he should immediately after, by a covenant of the same nature, covenant against the acts of the whole world.

It is however clear, that where covenants are several, and at the same time are of different natures, and concern different things, restrictive words in one covenant will not qualify or restrain the generality of the other. This point is clearly explained in the case of *Gainsford v. Griffith*, 1 Saund. 58. 2 Keb. 201. 213. 1 Sid. 328. A lessor covenanted that the lease in question, was a good, certain, and indefeasible lease in the law, and should so remain for the residue of the term; and that the lessee should quietly and peaceably enjoy and hold the premises during the term, without the lawful let, suit, trouble, or interruption of the lessor, his executors, or administrators; and that the lessee should be saved harmless, and indemnified from all incumbrances, made, committed, suffered, or done by *the lessor*: the question was, whether the restrictive words at the end of the last covenant qualified and explained the first? and it was

3

holden,

holden, that they were distinct sentences, and of different natures; and therefore the words at the end of the last sentence, which qualified the covenant against incumbrances to such incumbrances as were committed by the lessor, could not extend to the former covenant; that the lease was a good, indefeasible, lease, &c.

So, where a man covenanted, that he was seised of a certain manor in fee, notwithstanding any act done by him or any of his ancestors; and that no reversion or remainder was in the king, or any other; and that the said manor was of the annual value of three hundred pounds per annum; it was holden, that these covenants were absolute and distinct, and that the restrictive words in the first covenant could not qualify the last sentence respecting the value. *Crayford v. Crayford*, Cro. Car. 106. The same point was determined in the case of *Hughes v. Bennet*, Cro. Car. 495.

However, when several sentences make but one entire covenant, restrictive words in one sentence may be extended to, and qualify, the other sentences; provided the
sense

señse will admit of it. Thus, where a termor assigned his term, and covenanted, that he had not made any grant, or done any thing, by means whereof the grant or assignment could in any manner be impaired, hindered, or frustrated; *but that* the assignee should enjoy without any impediment or disturbance by him or any other person; it was adjudged, that this was but one sentence, and that the express restrictive words in the beginning of the covenant restrained and qualified the generality of the subsequent words, *by any other person*. Dyer 240. a. b. pl. 43. Gervis v. Pead, Cro. El. 615.

In the case of Trenchard v. Hoskins, (Litt. Rep. 62. to 69. 203. to 211.) a grantor covenanted that he was seised in fee, and that he had a good and lawful authority to sell, and that there was no reversion or remainder in the crown, notwithstanding any act done by him. The question was, whether the last restrictive words explained the preceding covenants, that he was seised in fee, &c. ? It was determined in the common pleas, that these were three distinct and several covenants, and therefore the restrictive words in the last sentence could

could not extend to the first. But, upon a writ of error in the King's Bench, this judgment was reversed (2 Keb. 201.); though that reversal was never entered. 1 Sid. 328. The opinion of the court of King's Bench, that the three sentences in the above case made but one entire covenant, seems to be over-ruled by the later decision in the before cited case of *Nervin v. Munns*.

It should seem, that an express covenant may qualify and restrain the operation of a preceding *implied* covenant. Thus, any express covenant on the part of a grantor will qualify the generality of the implied covenant, or warranty, produced by the word *grant*, when that word is used to pass a *chattel* interest; for it seems, with respect to a freehold, or inheritance, that that word does not import any warranty or implied covenant. See But. Co. Litt. 384. a. n. 1. 1 Vef. 101. Vaugh. 126. 4 Co. 80. b. *Noke's case*. It must be observed, that, in grants of estates of freehold, the word *give* creates an implied warranty, the generality of which cannot be controuled by any express covenant. Co. Litt. 384. a. Litt. Rep. 64. So, if a man make

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a lease

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a lease for years rendering rent, and add an express warranty; the express warranty does not take away the warranty in law; for the lessee has his election to vouch by force of either of them. 4 Co. 81. a. Co. Litt. 384. a.

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